

**SAFEGUARDING AMERICAN CONSUMERS: FIGHT-  
ING FRAUD AND SCAMS DURING THE PAN-  
DEMIC**

---

**VIRTUAL HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CONSUMER PROTECTION AND  
COMMERCE  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTEENTH CONGRESS  
FIRST SESSION

—  
FEBRUARY 4, 2021  
—

**Serial No. 117-3**



Published for the use of the Committee on Energy and Commerce  
[govinfo.gov/committee/house-energy](https://govinfo.gov/committee/house-energy)  
[energycommerce.house.gov](https://energycommerce.house.gov)

—  
U.S. GOVERNMENT PUBLISHING OFFICE

45-229 PDF

WASHINGTON : 2021

## COMMITTEE ON ENERGY AND COMMERCE

FRANK PALLONE, JR., New Jersey  
*Chairman*

BOBBY L. RUSH, Illinois	CATHY McMORRIS RODGERS, Washington
ANNA G. ESHOO, California	<i>Ranking Member</i>
DIANA DeGETTE, Colorado	FRED UPTON, Michigan
MIKE DOYLE, Pennsylvania	MICHAEL C. BURGESS, Texas
JAN SCHAKOWSKY, Illinois	STEVE SCALISE, Louisiana
G. K. BUTTERFIELD, North Carolina	ROBERT E. LATTA, Ohio
DORIS O. MATSUI, California	BRETT GUTHRIE, Kentucky
KATHY CASTOR, Florida	DAVID B. McKINLEY, West Virginia
JOHN P. SARBANES, Maryland	ADAM KINZINGER, Illinois
JERRY McNERNEY, California	H. MORGAN GRIFFITH, Virginia
PETER WELCH, Vermont	GUS M. BILIRAKIS, Florida
PAUL TONKO, New York	BILL JOHNSON, Ohio
YVETTE D. CLARKE, New York	BILLY LONG, Missouri
KURT SCHRADER, Oregon	LARRY BUCSHON, Indiana
TONY CARDENAS, California	MARKWAYNE MULLIN, Oklahoma
RAUL RUIZ, California	RICHARD HUDSON, North Carolina
SCOTT H. PETERS, California	TIM WALBERG, Michigan
DEBBIE DINGELL, Michigan	EARL L. "BUDDY" CARTER, Georgia
MARC A. VEASEY, Texas	JEFF DUNCAN, South Carolina
ANN M. KUSTER, New Hampshire	GARY J. PALMER, Alabama
ROBIN L. KELLY, Illinois, <i>Vice Chair</i>	NEAL P. DUNN, Florida
NANETTE DIAZ BARRAGÁN, California	JOHN R. CURTIS, Utah
A. DONALD McEACHIN, Virginia	DEBBBIE LESKO, Arizona
LISA BLUNT ROCHESTER, Delaware	GREG PENCE, Indiana
DARREN SOTO, Florida	DAN CRENSHAW, Texas
TOM O'HALLERAN, Arizona	JOHN JOYCE, Pennsylvania
KATHLEEN M. RICE, New York	KELLY ARMSTRONG, North Dakota
ANGIE CRAIG, Minnesota	
KIM SCHRIER, Washington	
LORI TRAHAN, Massachusetts	
LIZZIE FLETCHER, Texas	

---

### PROFESSIONAL STAFF

JEFFREY C. CARROLL, *Staff Director*  
TIFFANY GUARASCIO, *Deputy Staff Director*  
NATE HODSON, *Minority Staff Director*

SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE

JAN SCHAKOWSKY, Illinois

*Chair*

BOBBY L. RUSH, Illinois  
KATHY CASTOR, Florida  
LORI TRAHAN, Massachusetts  
JERRY MCNERNEY, California  
YVETTE D. CLARKE, New York  
TONY CARDENAS, California  
DEBBIE DINGELL, Michigan  
ROBIN L. KELLY, Illinois  
DARREN SOTO, Florida  
KATHLEEN M. RICE, New York  
ANGIE CRAIG, Minnesota  
LIZZIE FLETCHER, Texas  
FRANK PALLONE, JR., New Jersey (*ex officio*)

GUS M. BILIRAKIS, Florida  
*Ranking Member*  
FRED UPTON, Michigan  
ROBERT E. LATTA, Ohio  
BRETT GUTHRIE, Kentucky  
LARRY BUCSHON, Indiana  
NEAL P. DUNN, Florida  
GREG PENCE, Indiana  
DEBBIE LESKO, Arizona  
KELLY ARMSTRONG, North Dakota  
CATHY McMORRIS RODGERS, Washington  
(*ex officio*)





## C O N T E N T S

---

	Page
Hon. Jan Schakowsky, a Representative in Congress from the State of Illinois, opening statement .....	3
Prepared statement .....	4
Hon. Gus Bilirakis, a Representative in Congress from the State of Florida, opening statement .....	5
Prepared statement .....	6
Hon. Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, opening statement .....	8
Prepared statement .....	9
Hon. Cathy McMorris Rodgers, a Representative in Congress from the State of Washington, opening statement .....	10
Prepared statement .....	12

### WITNESSES

Bonnie L. Patten, Executive Director and Cofounder, Truth in Advertising .....	14
Prepared statement .....	16
Answers to submitted questions .....	144
Traci Ponto, Crime Victim Advocate, Spokane Community Oriented Policing Service .....	38
Prepared statement .....	40
Additional material submitted for the record .....	42
William E. Kovacic, Professor, George Washington University School of Law ..	65
Prepared statement .....	67
Submitted questions <sup>1</sup> .....	147
Jessica Rich, Distinguished Fellow, Institute of Technology Law and Policy, Georgetown University Law Center .....	78
Prepared statement .....	80
Answers to submitted questions .....	150

### SUBMITTED MATERIAL

Letter of February 4, 2021, from Jonathan Spalter, President and Chief Executive Officer, USTelecom–The Broadband Association, to Ms. Schakowsky and Mr. Bilirakis, submitted by Ms. Schakowsky .....	129
Letter of October 22, 2020, from Joseph J. Simons, Chairman, Federal Trade Commission, et al., to Mr. Pallone, et al., submitted by Mr. Cárdenas .....	131
Letter of February 4, 2021, from Dean S. Marks, Executive Director and Legal Counsel, Coalition for Online Accountability, to Ms. Schakowsky and Mr. Bilirakis, submitted by Ms. Schakowsky .....	136
Letter of July 30, 2020, from Joseph J. Simons, Chairman, Federal Trade Commission, et al., to Mr. Latta, submitted by Mr. Latta .....	142

---

<sup>1</sup> Mr. Kovacic did not answer submitted questions for the record by the time of publication.



## **SAFEGUARDING AMERICAN CONSUMERS: FIGHTING FRAUD AND SCAMS DURING THE PANDEMIC**

**THURSDAY, FEBRUARY 4, 2021**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CONSUMER PROTECTION AND  
COMMERCE,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 12:00 p.m., via Cisco Webex online video conferencing, Hon. Jan Schakowsky (chair of the subcommittee) presiding.

Members present: Representatives Schakowsky, Rush, Castor, Trahan, McNerney, Clarke, Cárdenas, Dingell, Kelly, Soto, Rice, Craig, Fletcher, Pallone (ex officio), Bilirakis (subcommittee ranking member), Upton, Latta, Guthrie, Bucshon, Dunn, Pence, Lesko, Armstrong, and Rodgers (ex officio).

Also present: Representatives Blunt Rochester and Carter.

Staff present: Jeffrey C. Carroll, Staff Director; Lisa Goldman, Senior Counsel; Waverly Gordon, General Counsel; Tiffany Guarascio, Deputy Staff Director; Perry Hamilton, Deputy Chief Clerk; Alex Hoehn-Saric, Chief Counsel, Communications and Consumer Protection; Ed Kaczmariski, Policy Analyst; Zach Kahan, Deputy Director, Outreach and Member Service; Mackenzie Kuhl, Press Assistant; Kaitlyn Peel, Digital Director; Tim Robinson, Chief Counsel; Chloe Rodriguez, Deputy Chief Clerk; Sydney Terry, Policy Coordinator; Anna Yu, Professional Staff Member; Sarah Burke, Minority Deputy Staff Director; William Clutterbuck, Minority Staff Assistant; Theresa Gambo, Minority Financial and Office Administrator; Nate Hodson, Minority Staff Director; Peter Kielty, Minority General Counsel; Emily King, Minority Member Services Director; Bijan Koohmaraie, Minority Chief Counsel; Tim Kurth, Minority Chief Counsel, Consumer Protection and Commerce; Brannon Rains, Minority Policy Analyst, Consumer Protection and Commerce, Energy, Environment; Michael Taggart, Minority Policy Director; and Everett Winnick, Minority Director of Information Technology.

Ms. SCHAKOWSKY. Good afternoon, everyone. Welcome to the Subcommittee on Consumer Protection and Commerce, and it will now come to order.

Today I will be holding a hearing entitled “Safeguarding American Consumers: Fighting Scams and Fraud During the Pandemic.” And due to COVID–19 public health emergency, today’s hearing

will be conducted entirely remotely. All Members and witnesses will be participating via video conference.

As part of our hearing, microphones will be set on mute for the purpose of eliminating inadvertent background noise. Members and witnesses will need to unmute your microphones each time that you wish to speak. I will try and remind you.

Additionally, Members will need to be visible on screen in order to be recognized.

Documents for the record can be sent to Ed Kaczmariski and—at the email address that we have provided to staff. All documents will be entered into the record at the conclusion of the hearing.

Before I recognize myself for an opening statement, I want to take a point of personal privilege, and recognize some of the—all of the new Members to our subcommittee. And I—first let me just recognize the Democrats.

We have Kathleen Rice from New York, Angie Craig from Minnesota, Lizzie Fletcher from Texas, and Lori Trahan from Massachusetts. So welcome to the Democratic new Members.

I will mention the new Members also on the Republican side, and afterwards I am going to welcome the new ranking member, Gus Bilirakis from Florida, who has been on this committee but not on the subcommittee before. And I am so happy to have him. But let me just mention the GOP Members.

We have Neal Dunn from Florida, Debbie Lesko from Arizona, Greg Pence from Indiana, and Kelly Armstrong from North Dakota.

Welcome all. We are so—I am so happy. I hope you are now, to be on this important subcommittee.

So I am going to see if Congressman Bilirakis, our ranking member, has some words to say. Let me turn it over to you.

Oh, let me first just say we do have new staff—I really messed up his name once—Ed Kaczmariski.

And I also just wanted to mention that we have a new Acting Chair of the Federal Trade Commission. She has been on the Commission before, but—Rebecca Kelly Slaughter.

So, Gus, Representative and Ranking Member Bilirakis?

Mr. BILIRAKIS. Yes, Chair.

Ms. SCHAKOWSKY. Go ahead.

Mr. BILIRAKIS. Yes, thank you very much. I appreciate it. And I look forward to working with you for our constituents and, well, the whole country. And this is a wonderful, wonderful committee, the best committee in Congress. And I am really looking forward to it.

I do have a prepared statement, but I am really looking forward to working also with the Republican leader, Cathy McMorris Rodgers, my great friend.

So, again, you recognized the new Members. I think we have an all-star team here. These new—Dr. Dunn from Florida and, of course, Mr. Pence, who we just spoke with, has some great ideas from Indiana. And then Ms. Lesko, I admire her so much, she does a great job for the team, and for her district as well, from Arizona. And then Mr. Armstrong from North Dakota. So—and again, all the Democratic—the new Members on the Democratic side, as well. We are going to work and get things done for the American people.

So with that, I will yield back, Madam Chair.

Ms. SCHAKOWSKY. Thank you. I just wanted to say I am excited about Representative Bilirakis. He was voted in Florida the most effective Member of Congress because of all the bills that he actually got passed into law. So I am looking forward to seeing that kind of performance in a bipartisan way here, also, in the committee.

So at this point I will recognize myself for an opening statement of 5 minutes.

**OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

So, again, good morning and welcome to our hearing on the Federal Trade Commission and its response to COVID-19.

The Federal Trade Commission was established in 1914, through an Act of Congress, and is inextricably linked to our committee, and particularly to the work of our subcommittee.

And of course, you know that the Energy and Commerce Committee is the oldest standing committee in Congress, originally stood up to regulate interstate and international commerce. And, like this committee, the Federal Trade Commission was tasked with regulating interstate commerce. It is the only agency with jurisdiction over both consumer protection and competition issues.

Many critics, myself included, frankly, would argue that the Federal Trade Commission has not lived up to its potential over the last, well, 40 years. But yesterday the FTC announced a remarkable settlement with Amazon over its systemic stealing of delivery drivers' tips. Imagine.

This is an example of the sort of announcement I had hoped that the new Acting Chairwoman would make, a sign that the Federal Trade Commission would be taking on big cases that serve as a true deterrent to illegal conduct by those who might prey on American consumers.

But we must recognize that this settlement would not have been possible without the threat of the Federal Trade Commission using its section 13(b) authority. I will explain.

Under 13(b), the Federal Trade Commission can require defrauders to provide restitution, money, to individuals who have been defrauded. Unfortunately, this authority is under assault right now at the Supreme Court, and the FTC may find itself deprived of a critical tool.

Additionally, companies that defraud consumers make it hard on honest businesses to be able to conduct their business and to gain the trust of consumers. So I would hope that organizations like the Chamber of Commerce would recognize that rooting out bad actors and returning stolen funds to consumers is important for them and for everyone.

Luckily, the Federal Trade Commission, in a bipartisan way, has reaffirmed the authority of section 13(b). So all the Commissioners are on board, but it should be—we should all be on board.

Specifically, the COVID—specific to COVID-19, the Federal Trade Commission has been very aggressive in investigating fraud that originates online. The agency has sent hundreds of takedown letters, but has not really gone after the major cause of the problem, which is negligence by platforms.

These platforms are not unwitting co-conspirators, but rather partners in profit. Platforms must demonstrate real efforts toward keeping scammers off their sites, especially now, of course, with consumers relying more on the Internet for their shopping.

I would like to see the subcommittee pass what we—what I have called the Informed Consumer Act, which would require online platforms to verify the identity of their third-party sellers. This would go a long way toward protecting Americans. And I hope that this Congress—this subcommittee can pursue a 21st century consumer rights agenda, in a bipartisan way, and make sure that consumer rights that exist in the physical world also extend to the online world.

I am looking forward to the direction that the FTC Acting Chair will take in protecting consumers and using all the tools, including the franchise rule, the funeral home rule, and pursue more when it comes to unfair practices, unfair cases.

[The prepared statement of Ms. Schakowsky follows:]

#### PREPARED STATEMENT OF HON. JAN SCHAKOWSKY

Good afternoon, and welcome to our hearing on the Federal Trade Commission and its response to COVID-19. The Federal Trade Commission was established in 1914, through an act of Congress, and is inextricably linked with this committee, in particular this subcommittee. The Energy and Commerce Committee is the oldest standing committee in Congress, originally stood up to regulate interstate and international commerce. Like this committee, the Federal Trade Commission was tasked with regulating interstate commerce. It is the only agency with jurisdiction over both consumer protection and competition issues.

Many critics, myself included, would argue that the Federal Trade Commission has not lived up to its potential over the last 40 years. But, yesterday, the FTC announced a remarkable settlement with Amazon over its systematic stealing of its delivery drivers' tips. This is exactly the sort of announcement I had hoped the new Acting Chairwoman would make, a signal that the FTC would be taking on big cases that serve as a true deterrent for illegal conduct by those who might prey on Americans. But we must recognize that this settlement would not have been possible without the threat of the FTC using its section 13B authority. I'll explain.

Under 13(b), the FTC can require defrauders to provide restitution (money) to individuals who have been defrauded. Unfortunately, this authority is under assault at the Supreme Court, and the FTC may find itself deprived of a critical tool. Additionally, companies that defraud consumers make it hard for honest businesses to compete and gain the trust of consumers. I would hope that organizations like the Chamber of Commerce would recognize that rooting out bad actors and returning stolen funds to consumers is important to everyone. Luckily, reaffirming the FTC 13(b) authority is a bipartisan issue at the Commission as it should be everywhere.

Specific to COVID-19, the FTC has been very aggressive in investigating fraud that originates online. The agency has sent hundreds of takedown letters but has not gone after a major cause of the problem—negligence by platforms. These platforms are not unwitting conspirators, but rather partners-in-profit. Platforms must demonstrate real efforts towards keeping scammers off the sites. Especially now when Americans are more reliant than ever on e-commerce.

I would like to see our subcommittee pass the INFORM Consumer Act, which would require online platforms to verify the identity of third-party sellers. This would go a long way toward protecting Americans. I hope this Congress, this subcommittee can pursue a 21st Century Consumer Rights agenda, in a bipartisan way, and make sure consumer rights that exist in the physical world extend to the online world. And I am looking forward to the direction the FTC Acting Chair will take the Commission—using all the tools—including the franchise rule, the funeral home rule, and pursuing more unfairness cases.

Thank you to witnesses for joining us today. I now recognize Mr. Bilirakis for 5 minutes.

Ms. SCHAKOWSKY. So I want to thank the witnesses who are here for joining us today. I now will recognize Mr. Bilirakis for 5 minutes.

**OPENING STATEMENT OF HON. GUS BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. BILIRAKIS. Thank you, Madam Chair. And again, I want to thank all the members of the committee. Welcome to the Consumer Protection and Commerce Subcommittee hearing of the 117th Congress.

I would like to congratulate again you, Madam Chair, for another term leading this great subcommittee, where we promise innovation, champion emerging technologies, and protecting consumers. And I am greatly looking forward to working with you.

And I want to thank also the Republican leader for giving me—the E&C leader, for giving me the opportunity to serve on the committee. I appreciate it so much. And to chair—I mean, excuse me, to be the ranking member, or the lead Republican on the CPC. So I—again, I want to thank Ms. Rodgers for giving me the opportunity to lead as a Republican and congratulate her on leading the committee on the Republican side, and I also look forward to working with the full committee chair, who is a good friend of mine, as well, Mr. Pallone.

I know Cathy is going to do a great job as our leader to help the American people, as well.

Today we will explore steps we can take to advance our fight against fraud and scams, which is so important to—again, especially during this pandemic. Millions are forced to isolate or remain in their homes, and bad actors continue to exploit consumers' fears, their fear and confusion, some promising fake reservations for the coronavirus vaccines—again, fake is the word that I want to use—stimulus checks, fake loans for small businesses struggling to stay afloat, and, of course, we want to discuss the Super Bowl tickets. And we are hoping—I am hoping that my Tampa Bay Buccaneers will prevail on Sunday.

Just earlier this year, in my district in Pasco County—I represent Pasco, which is the Tampa Bay area, as well as Pinellas and Hillsborough Counties—the health departments discovered use of a fake Eventbrite website being used to charge money for registrations for the COVID vaccine. Inexcusable. This fake website was a complete scam, where, as we know, vaccine registration is completely free.

We must continue to protect consumers from falling victim to scams. And it is not only—it not only cripples individuals financially, but can also cause serious mental health issues and lead to suicide, again, particularly during this pandemic.

We made great progress on this subcommittee last year. We enacted H.R. 6435, the Combating Pandemic Scams Act, led by Representative Carter, along with Representatives Hudson, Kuster, and Blunt Rochester. With the efforts of our friends at the FTC, this law will focus the tools, give us the tools and resources on vulnerable communities to better educate and protect them from scams.

Unfortunately, scammers are continuing to find new ways to exploit vulnerable Americans during COVID-19. With people remaining locked in their homes, many head online for social interaction, particularly our seniors. The bad guys know this and take advantage of it. And the FTC has already found that people are increasingly falling victim, unfortunately, to scams through social media platforms. This must stop.

In just the first 6 months of 2020, scams originating from social media tripled, resulting in 117 million in losses. With more consumers tuning in to these platforms, scammers create fake profiles offering connection, friendship, or economic relief, only to steal information and hard-earned dollars. These scams will often come by way of a friend, a friend request, and direct messages or advertisements.

As the FTC continues to publish helpful information on best practices, I urge big tech platforms—I urge them to—that they should help your users remain vigilant against scams and fraud.

Bad actors will resort to any means to steal money and information. We know that. They will create fake profiles, calls from new phone numbers, and even try to mask their identity as a friend or family member.

The best preventative measure is education, as you all know, and entities across the country working in unison to share educational materials. And we must have a duty to share these materials with our constituents. If consumers know what to look for, they will be better equipped to avoid these scams.

I commend the FTC for their tireless work fighting on behalf of consumers. However, they cannot do it alone. There must be greater collaboration—I am over my time, Madam Chair. I am just—can I ask for another 20 seconds?

[No response.]

Mr. BILIRAKIS. If not, that is OK. We will discuss these issues during the meeting, and I apologize for going over my time.

And I will yield back—

Ms. SCHAKOWSKY. No, go ahead, go ahead, finish.

Mr. BILIRAKIS. Is that OK? All right, I am very—I will be finished.

There must be greater collaboration and cooperation with State and local law enforcement, as you know, collaboration and cooperation for merchants, and platforms, and communities to better educate consumers on best practices to avoid falling for scams, and to increase efforts to hold bad actors accountable.

I want to thank all of our witnesses for being here today, and I look forward to learning how to better strengthen protections for Americans from scams and frauds. And this is a great way to lead, Madam Chair. Thanks for having the agenda and this particular meeting. It is so important. Thank you.

[The prepared statement of Mr. Bilirakis follows:]

#### PREPARED STATEMENT OF HON. GUS BILIRAKIS

Thank you Madame Chair. Good morning and welcome to our first Consumer Protection and Commerce Subcommittee hearing of the 117th Congress.



I would like to congratulate Chair Schakowsky for another term leading this great subcommittee where we promote innovation, champion emerging technologies, and protect consumers, and I am greatly looking forward to working with you.

I would also like to recognize the newest Republican members of the subcommittee, Dr. Dunn from Florida, Mr. Pence from Indiana, Ms. Lesko from Arizona, and Mr. Armstrong from North Dakota.

You all bring unique and invaluable expertise and I am eager to see the great work you all will accomplish.

Lastly, I would like to thank my friend, E&C Republican Leader Rodgers, for giving me the opportunity to lead Republicans on this subcommittee and congratulate her on leading this great committee for our side of the aisle.

I know she is going to do great things as our leader to help the American people.

Today we will explore steps we can take to advance our fight against fraud and scams—which is so important during this pandemic. Millions are forced to isolate and remain in their homes and bad actors continue to exploit consumers' fear and confusion—some promising fake reservations for coronavirus vaccines, stimulus checks, loans for small businesses struggling to stay afloat, and even Super Bowl tickets.

Just earlier this year in my district in Pasco and Pinellas Counties in Florida, the health departments discovered use of a fake Eventbrite website being used to charge money for registrations for the COVID vaccine.

This fake website was a complete scam, for as we know vaccine registration is completely free.

We must continue to protect consumers from falling victim to scams, as it not only cripples individuals financially but can also cause serious mental health issues and lead to suicide.

We made great progress on this subcommittee last year.

We enacted H.R. 6435, the Combating Pandemic Scams Act, led by Rep. Carter, along with Reps. Hudson, Kuster, and Blunt Rochester.

With the efforts of our friends at the Federal Trade Commission, this law will focus tools and resources on vulnerable communities to better educate and protect them from scams.

Unfortunately, scammers are continuing to find new ways to exploit vulnerable Americans during COVID-19.

With people remaining locked in their homes, many head online for social interaction.

The bad guys know this, and the FTC has already found that people are increasingly falling victim to scams through social media platforms.

In just the first 6 months of 2020, scams originating from social media tripled, resulting in \$117 million in losses.

With more consumers tuning in to these platforms, scammers create fake profiles offering connection, friendship, or economic relief only to steal information and hard-earned dollars. These scams will often come by way of friend requests and direct messages or advertisements.

As the FTC continues to publish helpful information on best practices, I urge Big Tech platforms to do better—you should help your users remain vigilant against scams and fraud.

Bad actors will resort to any means to steal money and information—they will create fake profiles, calls from new phone numbers, and even try to mask their identity as a friend or family member.

The best preventative measure is education, and entities across the country working in unison to share educational materials. If consumers know what to look for, they will be better equipped to avoid scams.

I commend the FTC for their tireless work fighting on behalf of consumers.

However, they cannot do it alone.

There must be greater collaboration and cooperation with State and local law enforcement, merchants and platforms, and communities to better educate consumers on best practices to avoid falling for scams and to increase efforts to hold bad actors accountable.

I want to thank all of our witnesses for being here today and I look forward to learning how to better strengthen protections for Americans from scams and frauds.

I yield back.

Mr. BILIRAKIS. And again, I will yield back.

Ms. SCHAKOWSKY. When I listen to you, I can see that we are really on the same page on so many things.

And now—the gentleman yielded back, and I now recognize the chairman of the full committee, Mr. Pallone, for 5 minutes.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Chairwoman Schakowsky. And it is good to see our new ranking member, Gus Bilirakis, as well. Good to see you both.

I wanted to—let me just say my concern, of course, we have a situation now where we have safe and effective vaccines, and we are trying to push them out. But, while these vaccines provide real hope, there are new variants of the coronavirus, you know, that are now spreading, that are highly transmissible. And for consumers, these new strains are causing a renewed panic—I am sure you are hearing about this from your constituents—and another scramble for personal protective equipment, intense demand for vaccine appointments.

But for scammers and fraudsters, this is exactly the kind of fear and desperation that they seize and thrive on. So that is why I think that this hearing is so important, not only to deal with the scams and frauds that we have seen in the last 10 months but now, you know, even more opportunity for scams and frauds because of the fear that a lot of people have with these new variants.

And overall, the pandemic has just upended American life, pushing so many aspects of consumer laws to the online realm. And you get all these fly-by-night businesses that are just a click away, and fraudsters that can assume different identities. And there are con artists that really pose threats to consumers' health, safety, and financial well-being.

And these sellers, these unscrupulous sellers on the Internet, are sophisticated. They flood fees to drive traffic to their suspect goods. They include counterfeit and substandard personal protective equipment, sham testing kits, bogus cures. But the products they are selling can endanger the health, and their online stores may just be a front to scam consumers. And the number of reports about scams originating on social media has more than tripled in the past year.

And these scams, Madam Chair, have been particularly harmful to older Americans and senior citizens. I know you have been involved with the Senior Task Force for so many years, Jan.

And this isolation—you know, a lot of these people are isolated now, these seniors, and that has left them particularly vulnerable to fraudsters. For example, online puppy scams and romance scams have risen precipitously during the pandemic.

And some of the worst fraudsters are the identity thieves stealing stimulus checks and unemployment benefits from those already struggling to pay their bills. To make matters worse, these people are often targeted for fake employment scams, deceptive income schemes, and unwise investment solicitations.

So I wanted to applaud both the chairwoman and Congressman Bucshon for their bipartisan work in giving the Federal Trade Commission new authority to seek civil penalties for COVID-19 scams. That was in the 2021 omnibus end-of-the-year package. And

that provision empowers the FTC to dole out real consequences to bad actors. They reported losing more than 300 million—you know, consumers have lost more than 300 million in just pandemic-related fraud.

Now, one of the concerns that I have, though, is that the FTC's ability to make victims whole is under threat in the Supreme Court. And it is—that is why it is critical that the FTC step up its efforts to protect consumers. I know that Tony Cárdenas has a bill to deal with this power of restitution that we feel is under threat, and he is going to talk about that.

But the former FTC chairman, Joseph Simons, I think, insulated some of the worst that came out, some of these scams, because of—and was very critical sometimes of the Trump administration. But the agency really needs to show its teeth now. And because—since the beginning of the pandemic the FTC has issued numerous warning letters, but warning letters are nothing, they are really just a slap on the wrist.

[The prepared statement of Mr. Pallone follows:]

#### PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

As our Nation continues to confront the unprecedented public health and economic crisis resulting from the COVID-19 pandemic, we are now seeing the rollout of powerful tools to help us contain the virus—safe and effective vaccines. While these vaccines provide real hope, new variants of the coronavirus are now spreading that are highly transmissible. For consumers, these new strains are causing renewed panic, a fresh scramble for personal protective equipment, and intense demand for vaccine appointments. For scammers and fraudsters, this is exactly the kind of fear and desperation they seize and thrive on.

The COVID-19 pandemic has completely upended American life, pushing so many aspects of consumers' lives to the online realm, where fly-by-night businesses are just a click away and fraudsters can easily assume different identities. These con artists pose real threats to consumers' health, safety, and financial well-being, to say nothing of the emotional trauma and embarrassment.

Unscrupulous sellers are sophisticated on social media, flooding feeds to drive traffic to their suspect goods, including counterfeit and substandard personal protective equipment, sham testing kits, and bogus cures. But the products they are selling can endanger one's health and their online stores may just be a front to scam consumers. The number of reports about scams originating on social media has more than tripled in the past year.

These scams have been particularly harmful to older Americans and senior citizens, who have gone months with little interpersonal contact and support. This isolation has left them particularly vulnerable to fraudsters. For example, online puppy scams and romance scams have risen precipitously during the pandemic.

Some of the worst fraudsters are the identity thieves stealing stimulus checks and unemployment benefits from those already struggling to pay their bills and feed their family. To make matters worse, these people are often also targeted for fake employment scams, deceptive income schemes, and unwise investment solicitations.

I want to applaud Chairwoman Schakowsky and Congressman Bucshon for their bipartisan work in giving the Federal Trade Commission (FTC) new authority to seek civil penalties for COVID-19 scams and deceptive practices in the 2021 omnibus. This provision will empower the FTC to dole out real consequences to bad actors that prey on consumers during these especially challenging times.

Since the beginning of the pandemic, consumers have reported losing more than \$300 million in just pandemic-related fraud.

A core part of the FTC's consumer protection mission is returning money to consumers that was unlawfully taken from them. Last year, the FTC successfully returned more than \$400 million back to consumers that had been lost to fraud.

But the FTC's ability to make victims whole is under threat in the Supreme Court. With this looming threat, it is critical that the FTC step up its efforts to protect consumers. Former FTC Chairman Joseph Simons may have helped insulate the agency from some of the worst that came out of the Trump administration, but to effectively combat scammers, the agency needs to show its teeth.

Since the beginning of the pandemic, the FTC has issued numerous warning letters to companies allegedly selling unapproved products that claim to treat or cure COVID-19. But warning letters are nothing more than a slap on the wrist and do nothing to help consumers who may have already been harmed. Over the objections of Democratic Commissioners, the FTC also settled case after case, failing to hold individual executives accountable or seek sufficient monetary penalty. And the FTC failed to initiate rulemakings that could help the Commission efficiently pursue civil penalties.

I look forward to hearing from our expert witness panel on what must be done to meaningfully combat scammers and protect consumers.

Thank you, and I'd like to yield my remaining time to Congressman Cárdenas.

Mr. PALLONE. So I want to hear from the panel. But before that, I would like to yield the time remaining to Tony Cárdenas, who—I know he has some important legislation that I mentioned.

Mr. CÁRDENAS. Thank you, Mr. Chairman. The Federal Trade Commission is the country's premier consumer protection agency, and respected internationally, and is the leader in consumer protection. For example, just in the last 5 years alone, they returned \$11 billion in refunds to victimized consumers.

Again, as the chairman mentioned, this authority to secure monetary relief for consumer victims under section 13(b) of the FTC Act currently hangs in the balance in the United States Supreme Court. Should the court rule against the FTC, American consumers will pay the price. As warned in a remarkable bipartisan letter from all five FTC Commissioners to the committee last October, and I quote, it says, "It is imperative that the Congress act quickly, so that the FTC can continue to effectively protect American consumers."

I would like to submit that letter for the record, Madam Chair, and I plan to introduce legislation in response to the bipartisan call to ensure the FTC's continued ability to return consumers and victims their resources.

I welcome working with my Republican colleagues on this issue. I note that Senator Wicker introduced legislation last Congress to address 13(b), and I hope we can continue to work in a bipartisan way on this.

Mr. THANK YOU VERY MUCH. I YIELD BACK MY TIME.

Mr. PALLONE. And I yield back as well, Madam Chair.

Ms. SCHAKOWSKY. There we go. That will be submitted in the record at the end of the hearing today.

Ms. SCHAKOWSKY. And let me now both congratulate and recognize Congresswoman McMorris Rodgers, and—for now being the ranking member on the full committee, and for her 5 minutes on this subcommittee.

You are recognized.

**OPENING STATEMENT OF HON. CATHY McMORRIS RODGERS,  
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF  
WASHINGTON**

Mrs. RODGERS. Thank you very much, Madam Chair. A big welcome to everyone to the first Consumer Protection and Commerce Subcommittee of the 117th Congress.

Last Congress I had the pleasure of working very closely with the chair, Chair Jan Schakowsky, as I was the subcommittee Republican leader. And I am very proud that we were able to accom-

plish some significant bipartisan priorities. We reauthorized the U.S. Safe Web Act to ensure international cooperation against scams and frauds, which has never been more important.

We also got the American COMPETE Act signed into law. And I really appreciate the help in getting this included in the end-of-the-year package. This bill will play an important role in widely deploying emerging technologies, many of which are also being used right now to respond to the pandemic.

We also made great bipartisan strides on privacy protections, and I hope that we can build on the bipartisan, bicameral achievements from the end of last year and get a Federal privacy law signed this year, as soon as possible.

I also want to congratulate my friend from Florida, Gus Bilirakis, for taking on the leadership of this subcommittee for the Republicans. I have every confidence he is going to do a great job. He is someone that digs in and really does the hard work of legislating to get results. And I am excited about what we will be able to accomplish for the American people, and how we will be able to help win the future.

These have been some difficult times, unprecedented times. Millions of citizens remain trapped inside their homes with little social interaction. In addition to worsening our country's mental health and substance abuse crisis, this isolation has created opportunities for bad actors to exploit Americans' pain.

Last Congress this subcommittee helped combat these bad actors and empower vulnerable communities to not become victims. Buddy Carter's Combating Pandemic Scams Act was signed into law at the end of last year, and I am glad that we are continuing the good work of this subcommittee at the beginning of this year.

As Mr. Bilirakis discussed, there are several scams to be on the lookout for, and lies about COVID vaccines and attempts to steal stimulus checks, as well as the good old gift card scams that are on the rise.

I want to thank and welcome Traci Ponto. She is from Spokane, Washington. She is with Spokane COPS., Community Oriented Policing Services. And she is one of our witnesses today. She is going to be sharing some of her insight on a range of scams that she sees and her work to protect and serve eastern Washington.

Education is the best prevention. And I know your dedication to that, and your cooperation with law enforcement is getting results for victims.

I also want to thank our allies at the Federal Trade Commission. They are on the front lines, educating our communities about the risks of COVID scams and holding bad actors accountable. And, just as I said during our work on privacy protections, we need a strong national standard and a regulator who is empowered to enforce that standard.

The FTC has long relied on section 13(b) of the FTC Act to obtain and enforce a range of remedies against certain illegal conduct. But I understand that that authority is currently being challenged in the courts. Specifically, the Third and Seventh Circuits have ruled recently that the FTC cannot obtain monetary relief under section 13(b). And the Third Circuit decided that the FTC misused section 13(b) to address past illegal conduct. While we await the Supreme

Court's decision, Congress has been asked by the FTC to amend the Act to clarify this authority.

There is certainly a need to get financial restitution to victims. However, I am concerned about the potential for the FTC to abuse that authority and use it primarily to leverage defendants into settlements. If the argument in favor of increased FTC authority is that defendants are defending themselves too often without it, it is simply not persuasive.

I want to be clear. I understand the importance of section 13(b) and the role that it can play in an agency's consumer protection mission, especially in the bigger cases. But I also understand the reality that the Democrats are in the control of both chambers and may want to move before the Supreme Court rules. If that is the case, we must use this time as an opportunity to address other reforms to the Commission.

Again, I want to thank the witnesses for being here today. This is a timely and important discussion, and I look forward to hearing from all of you. Thank you.

[The prepared statement of Mrs. Rodgers follows:]

#### PREPARED STATEMENT OF HON. CATHY MCMORRIS RODGERS

Good morning and welcome to the first Consumer Protection and Commerce Subcommittee hearing of the 117th Congress.

Last Congress, I had the pleasure of working closely with you, Chair Schakowsky, as this subcommittee's Republican leader. We were able to achieve significant bipartisan priorities.

For instance:

- We reauthorized the U.S. SAFE WEB Act to ensure international cooperation against scams and frauds, which has never been more important.
- We also got the American COMPETE Act signed into law. I appreciated your help and Chairman Pallone's help in getting it included in the year end package. This bill will play an important role in widely deploying emerging technologies, many of which are already being used to respond to the pandemic.

We also made great bipartisan strides on privacy protections. I hope we can build on the bipartisan, bicameral achievements from the end of last year and get a Federal privacy standard signed into law this Congress.

I want to congratulate my good friend from Florida, Gus Bilirakis, for taking on the leadership of this subcommittee for Republicans.

I am excited to see what you will accomplish for the American people and how you will help us win the future.

#### **COVID SCAMS**

These are unprecedented times.

Millions of our citizens remain trapped inside their homes with little social interaction.

In addition to worsening our country's mental health and substance abuse crisis, this isolation has created opportunities for bad actors to exploit American's pain.

Last Congress this subcommittee helped combat these bad actors and empowered vulnerable communities to not become victims.

Buddy Carter's Combating Pandemic Scams Act was signed into law at the end of last year, and I am glad we are continuing this good work through this hearing.

As Mr. Bilirakis discussed, there are several scams to be on the lookout for from lies about COVID vaccines to attempts to steal stimulus checks, as well as "old-school" gift cards scams that are on the rise.

I want to thank you, Traci Ponto of Spokane COPS (Community Oriented Policing Services), for sharing your insights on the range of scams you are encountering, and for your work to protect and serve Eastern Washingtonians.

Education is the best prevention, and I know your dedication to that and your cooperation with law enforcement gets results for victims.

#### **FTC 13(b) AUTHORITY**

I also want to thank our allies at the Federal Trade Commission.

They are on the frontlines educating our communities about the risks of COVID scams and holding bad actors accountable. And just as I have said during our work

on privacy protections, we need a strong national standard and a regulator who is empowered to enforce that standard.

The FTC has long relied on Section 13(b) of the FTC Act to obtain and enforce a range of remedies against certain illegal conduct, but I understand that authority is currently being challenged in the courts.

Specifically, the Third and Seventh Circuits have recently ruled that the FTC cannot obtain monetary relief under Section 13(b), and the Third Circuit decided the FTC misused Section 13(b) to address past illegal conduct.

While we await the Supreme Court's decision, Congress has been asked by the FTC to amend the act to clarify this authority.

There is certainly a clear need to get financial restitution to victims however, I am concerned about the potential for the FTC to abuse that authority and use it primarily to leverage defendants into settlements.

If the argument in favor of increased FTC authority is that defendants are defending themselves too often without it, that simply is not persuasive with me.

I want to be clear: I understand the importance of Section 13(b) and the role it can play in the agency's consumer protection mission, especially its bigger cases.

I also understand the reality that Democrats are in control of both chambers and may want to move before the Supreme Court rules.

If that is the case, we must use this time as an opportunity to address other reforms to the Commission.

Due process is a foundational principle for the protection of Americans' legal rights, and it must be central to any changes to existing law.

If we are to tackle 13(b) authorities, we should also take a holistic look at the FTC's authorities and consider other amendments.

We considered FTC process and transparency reforms in the 114th Congress, and that must be part of this legislative effort.

#### **CONCLUSION**

I want to thank our witnesses again for being here today for this timely and important discussion. I look forward to hearing from you all.

Thank you. I yield back.

Ms. SCHAKOWSKY. I would like to introduce our witnesses for today's hearing.

There is Bonnie Patten, the executive director of TruthinAdvertising.org; the Honorable William E.—let me say it right—Kovacic, who is global—let me get this right, OK—global competition professor of law and policy, professor of law and director of Competition Law Center at Georgetown University Law School. We have Traci Ponto, spokesman—no. Traci Ponto from Spokane COPS, crime victims advocate. You heard our ranking member of our full committee talk about her, from Spokane Community Oriented Policing Services. And Jessica Rich, director—no, I am sorry, distinguished fellow at the—I think maybe I could use my glasses here, let's see. No, not as good. Jessica Rich—am I past her? No, Jessica—distinguished fellow at the Institute of Technology Law and Policy at Georgetown Law.

Those are our witnesses, and we want to thank our witnesses for joining us today. We look forward to your testimony. And so let's begin with Ms. Patten.

You are recognized now for 5 minutes.

**STATEMENTS OF BONNIE L. PATTEN, EXECUTIVE DIRECTOR  
AND COFOUNDER, TRUTH IN ADVERTISING; TRACI PONTO,  
CRIME VICTIM ADVOCATE, SPOKANE COMMUNITY ORI-  
ENTED POLICING SERVICE; WILLIAM E. KOVACIC, PRO-  
FESSOR, GEORGE WASHINGTON UNIVERSITY SCHOOL OF  
LAW; AND JESSICA RICH, DISTINGUISHED FELLOW, INSTI-  
TUTE OF TECHNOLOGY LAW AND POLICY, GEORGETOWN  
UNIVERSITY LAW CENTER**

**STATEMENT OF BONNIE L. PATTEN**

Ms. PATTEN. Thank you, Chairman Schakowsky, Ranking Member Bilirakis, and members of the subcommittee. On behalf of Truth in Advertising, TINA.org, I am pleased to appear before you to highlight fraudulent and deceptive marketing schemes that have arisen during this unprecedented crisis, and to sound the alarm that the worst may be yet to come if the FTC cannot claw back ill-gotten gains from wrongdoers under section 13(b) of the FTC Act.

My organization, TINA.org, is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud. We work with businesses and government agencies on behalf of consumers to effectively prevent and stop deception in our economy. There can be no doubt that the ongoing pandemic has exacerbated the ever-present dangers of deceptive and unfair acts and practices in the marketplace.

TINA.org has heard from countless consumers, senior citizens, military veterans, and struggling parents whose experiences illustrate the fact that deceptive marketing is putting the health, financial well-being, and safety of our most susceptible populations at risk.

The list of deceptively marketed products and services exploiting this pandemic is extensive: CBD products marketed to military veterans as a coronavirus treatment; bleach, advertised as a liquid cure-all; wellness centers targeting first responders with IV vitamin drips to protect against COVID-19; Amazon and eBay sellers falsely claiming that their PPE is FDA approved; hand sanitizer marketed as protecting for 24 hours against COVID-19; alleged immunity-boosting supplements targeting children; colloidal silver solutions advertised as having the ability to kill the virus from within; toothpaste and teeth-whitening products claiming to prevent COVID-19; and sham wellness kits targeting seniors.

Unfortunately, the deception does not stop with outrageous health claims; many are exploiting the economic desperation wrought by this pandemic: multilevel marketing companies claiming people can earn full-time pay working part time; lending companies deceptively using the CARES Act to exploit college students; investment scams claiming to have patented COVID cures; and financial entities pretending to be SBA-authorized lenders to lure in small businesses struggling to keep their workers employed.

And to make matters worse, the agency primarily charged with policing these deceptive acts, the FTC, is now at risk of losing a mainstay of its enforcement authority: the ability to make victims whole under section 13(b).

Because 13(b) does not specifically say anything about equitable relief when a permanent injunction is issued, the Supreme Court



is now deciding the remedial scope, if any, of 13(b) in the case *AMG v. FTC*. AMG was a payday lending scheme that extracted money from people in desperate circumstances. In its appeal, the company does not dispute that it violated the law. Instead, it argues that the \$1.3 billion it stole should be its to keep.

AMG asserts that it was never Congress's intention for the FTC to return money to victims of fraud under 13(b). Quite to the contrary, AMG argues that this legislative body fully endorsed the notion that wrongdoers should pocket the money they have illegally taken when it drafted 13(b). If the Supreme Court rules in AMG's favor and this Congress does not act to empower the FTC to seek restitution under 13(b), then the deceptive practices I have enumerated will only multiply.

Allowing wrongdoers an absolute right to retain funds under 13(b) will make consumers and our economy more vulnerable to harm, especially during these unprecedented times.

Thank you, and I look forward to answering your questions.

[The prepared statement of Ms. Patten follows:]

**PREPARED STATEMENT OF**

**TRUTH IN ADVERTISING, INC.**

Bonnie L. Patten, Esq., Executive Director and Co-Founder

**Before the**

**COMMITTEE ON ENERGY AND COMMERCE**

**SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

**HOUSE OF REPRESENTATIVES**

**WASHINGTON, DC  
(via video conference)**

**FEBRUARY 4, 2021**

## I. INTRODUCTION

Chairman Schakowsky, Ranking Member Bilirakis, and members of the Subcommittee, on behalf of Truth in Advertising (TINA.org), I am pleased to appear before you to highlight fraudulent and deceptive marketing schemes that have arisen during this unprecedented crisis, and to sound the alarm that the worst may be yet to come if the Federal Trade Commission is not equipped with the legislative tools it needs to effectively eradicate deceptive and unfair acts and practices, including, but not limited to, clawing back ill-gotten gains from wrongdoers under Section 13(b) of the FTC Act.<sup>1</sup>

My organization, TINA.org, is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; we work with businesses and government agencies on behalf of consumers to effectively prevent and stop deception in our economy.

The central premise of modern consumer protection laws is that marketplace dishonesty causes harm to consumers and businesses alike; and, if left unchecked, such behavior impairs the efficient allocation of resources in our economy.<sup>2</sup> There can be no doubt that the ongoing pandemic has exacerbated the ever-present dangers of deceptive and unfair acts and practices in the marketplace. TINA.org has heard from countless consumers – senior citizens, military veterans and struggling parents – whose experiences illustrate the fact that deceptive marketing is putting the health, financial well-being and safety of our most susceptible populations at risk.

---

<sup>1</sup> It is important to note that even the most rigorous of laws are of little value if the agency responsible for enforcing them does not have the means or resources to properly police the marketplace. Given the FTC's limited resources, its current ability to oversee a multitrillion-dollar marketplace and protect more than 320 million consumers is clearly hampered. Unless more funding is allocated, it is impractical to think that the FTC can do more.

<sup>2</sup> Jeff Sovern, *Six Scandals: Why We Need Consumer Protection Laws Instead of Just Markets*, St. John's Legal Studies Research Paper No. 21-0001 (2021), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3765745](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3765745).

The list of deceptively marketed products and services exploiting this pandemic is extensive. CBD products marketed to military veterans as a coronavirus treatment;<sup>3</sup> bleach advertised as a liquid cure-all;<sup>4</sup> wellness centers targeting first responders with IV vitamin drips to protect against COVID-19;<sup>5</sup> Amazon and eBay sellers falsely claiming that their personal protective equipment (PPE) is FDA approved;<sup>6</sup> scammers simply failing to deliver paid-for PPE;<sup>7</sup> hand sanitizers marketed as providing 24-hour protection against COVID-19;<sup>8</sup> alleged immunity-boosting supplements targeted at children;<sup>9</sup> risky colloidal silver solutions advertised as having the ability to kill the virus from within;<sup>10</sup> toothpastes and teeth-whitening products claiming to prevent COVID-19;<sup>11</sup> and sham wellness kits targeting seniors.<sup>12</sup>

<sup>3</sup> Fed. Food & Drug Admin. and Fed. Trade Comm'n Warning Letter to Patriot Supreme (Oct. 16, 2020), available at [https://www.ftc.gov/system/files/warning-letters/fda-covid-19-letter-for\\_our\\_vets\\_11c.pdf](https://www.ftc.gov/system/files/warning-letters/fda-covid-19-letter-for_our_vets_11c.pdf).

<sup>4</sup> Press Release, The U.S. Dep't of Justice, Justice Dep't Seeks to End Illegal Online Sale of Industrial Bleach Marketed as "Miracle" Treatment for COVID-19 (Apr. 17, 2020), available at <https://www.justice.gov/opa/pr/justice-department-seeks-end-illegal-online-sale-industrial-bleach-marketed-miracle-treatment>; Fed. Food & Drug Admin. Warning Letter to Genesis 2 Church (Apr. 8, 2020), available at <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/genesis-2-church-606459-04082020>.

<sup>5</sup> *IV Therapies and COVID-19: The Drip, Drip, Drip of Deceptive Claims*, Truth In Advertising, Inc., June 3, 2020, <https://www.truthinadvertising.org/iv-therapies-and-covid-19-the-drip-drip-drip-of-deceptive-claims/>.

<sup>6</sup> *Face Mask Sellers on eBay Falsely Claim Products Are 'FDA Approved'*, Truth In Advertising, Inc., May 13, 2020, <https://www.truthinadvertising.org/face-mask-sellers-on-ebay-falsely-claim-products-are-fda-approved/>. It is often the case that products listed for sale in online marketplaces are deceptively advertised. When presented with such findings, companies typically point the finger at third-party vendors, deny liability, and use Section 230 of the Communications Decency Act as a shield. Removing the 230 shield from online commercial speech would allow the FTC to hold third-party vendor sites accountable.

<sup>7</sup> Press Release, The U.S. Dep't of Justice, Michigan Man Charged With COVID-19-Related Wire Fraud Scheme (Apr. 28, 2020), available at <https://www.justice.gov/usao-mdca/pr/michigan-man-charged-covid-19-related-wire-fraud-scheme>.

<sup>8</sup> Prompted by TINA.org, Hand Sanitizer Maker Removes COVID-19 Claims, Truth In Advertising, Inc., May 20, 2020, <https://www.truthinadvertising.org/prompted-tina-org-hand-sanitizer-maker-removes-covid-19-claims/>; CATrends: Hand Sanitizers Marketed to Prevent Disease, Truth In Advertising, Inc., Apr. 9, 2020, <https://www.truthinadvertising.org/catrends-hand-sanitizers-marketed-to-prevent-disease/>.

<sup>9</sup> TINA.org Finds Plexus Deceptively Marketing Supplements for Kids, Truth In Advertising, Inc., Aug. 12, 2020, <https://www.truthinadvertising.org/tina-org-finds-plexus-deceptively-marketing-supplements-for-kids/>.

<sup>10</sup> *Jim Bakker Show Claims Silver Solution Supplement Kills Coronavirus*, Truth In Advertising, Inc., Feb. 19, 2020, <https://www.truthinadvertising.org/the-jim-bakker-show-claims-silver-solution-supplement-kills-coronavirus/>.

<sup>11</sup> Press Release, New York State Attorney General, Attorney General James Orders Alex Jones to Stop Selling Fake Coronavirus Treatments (Mar. 12, 2020), available at <https://ag.ny.gov/press-release/2020/attorney-general-james-orders-alex-jones-stop-selling-fake-coronavirus-treatments>; *Snow Teeth Whitening*, Truth In Advertising, Inc., <https://www.truthinadvertising.org/snow-teeth-whitening/> (last visited Feb. 1, 2021).

<sup>12</sup> Katherine Skiba, *Pandemic Scammers Target Older Americans on Medicare*, AARP, July 8, 2020, <https://www.aarp.org/money/scams-fraud/info-2020/medicare-scams-coronavirus.html>.



Unfortunately, the deception does not stop with outrageous health claims; many are also exploiting the economic desperation wrought by this pandemic: multilevel marketing companies claiming people can earn full-time pay working part-time;<sup>13</sup> lending companies deceptively using the CARES Act to exploit college students;<sup>14</sup> investment scams claiming to have patented COVID cures;<sup>15</sup> and financial entities pretending to be SBA-authorized lenders to lure in small businesses struggling to keep their workers employed.<sup>16</sup>

And, to make matters worse, the agency primarily charged with policing these deceptive acts, the FTC, is now at risk of losing a mainstay of its enforcement authority – the ability to make victims whole under Section 13(b) of the FTC Act.<sup>17</sup> Because Section 13(b) does not specifically say anything about equitable relief when a permanent injunction is issued, the Supreme Court is now deciding the remedial scope (if any) of 13(b) in the case *AMG v. FTC*.<sup>18</sup>

AMG was a payday lending scheme that extracted money from people in desperate circumstances.<sup>19</sup> In its appeal, the company does not dispute that it violated the law. Instead, it

<sup>13</sup> *How MLMs Exploit Consumers During A Pandemic*, Truth In Advertising, Inc., Apr. 27, 2020, <https://www.truthinadvertising.org/how-mlms-exploit-consumers-during-a-pandemic/>; Press Release, Fed. Trade Comm’n, FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus (Apr. 24, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health>. MLM companies and their distributors are also taking advantage of the pandemic to make inappropriate health claims. *Mixed Messaging in the MLM Industry Regarding Coronavirus Claims*, Truth In Advertising, Inc., Apr. 14, 2020, <https://www.truthinadvertising.org/mixed-messaging-in-the-mlm-industry-regarding-coronavirus-claims/>.

<sup>14</sup> Fed. Trade Comm’n Warning Letter to Frank Financial Aid (Nov. 10, 2020), available at <https://www.ftc.gov/system/files/warning-letters/covid-19-letter-to-frank.pdf>.

<sup>15</sup> Press Release, Fed. Trade Comm’n, Southland Man Arrested on Federal Charges Alleging Fraudulent Investment Scheme Featuring Bogus Claims of COVID-19 Cure (Mar. 25, 2020), available at <https://www.justice.gov/usao-cdca/pr/southland-man-arrested-federal-charges-alleging-fraudulent-investment-scheme-featuring>.

<sup>16</sup> Fed. Trade Comm’n and Small Bus. Admin. Warning Letter to TF Group, Inc. d/b/a Taycor Financial (June 22, 2020), available at [https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-taycor\\_financial.pdf](https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-taycor_financial.pdf); Fed. Trade Comm’n Warning Letter to sbaddisasterloan.org (June 22, 2020), available at [https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-sbaddisasterloan.org\\_.pdf](https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-sbaddisasterloan.org_.pdf).

<sup>17</sup> 15 U.S.C. § 53.

<sup>18</sup> *AMG Capital Mgmt., LLC v. Fed. Trade Comm’n*, 2020 U.S. LEXIS 5378 (2020), available at <https://www.supremecourt.gov/docket/docketfiles/html/qp/19-00508qp.pdf>.

<sup>19</sup> Press Release, The U.S. Dep’t of Justice, Scott Tucker Sentenced To More Than 16 Years in Prison for Running \$3.5 Billion Unlawful Internet Payday Lending Enterprise (Jan. 5, 2018), available at <https://www.justice.gov/usao-sdny/pr/scott-tucker-sentenced-more-16-years-prison-running-35-billion-unlawful-internet-payday> (“For more than

argues that the \$1.3 billion it stole should be its to keep. AMG asserts that it was never Congress's intention for the FTC to return money to the victims of fraud under Section 13(b). Quite to the contrary, AMG argues that this legislative body fully endorsed the notion that wrongdoers should pocket the money they've illegally taken when it drafted 13(b).<sup>20</sup>

If the Supreme Court rules in AMG's favor and this Congress does not act to empower the FTC to seek restitution under Section 13(b), then the deceptive marketing practices I have enumerated will only multiply. Allowing wrongdoers an absolute right to retain funds under Section 13(b) will make consumers and our economy more vulnerable to harm, especially during these unprecedented times.

Moreover, if Congress truly wants to eradicate the deception that is plaguing our economy, it must add to the FTC's toolkit penalty authority over first-time offenders; a civil penalty fund for victims; as well as enhancement of some tools that the FTC already has at its disposal, including mandating that funeral homes disclose their pricing lists on their websites, requiring companies that use negative-option offers to simplify cancelations and provide clearer renewal information, and exclude the protection of commercial speech from Section 230 of the Communications Decency Act of 1996.<sup>21</sup> At present, businesses find it economically advantageous to ignore first-round FTC orders and settlements. Only when the calculus changes such that it becomes

---

15 years, [AMG's] Scott Tucker ... made billions of dollars exploiting struggling, everyday Americans through payday loans carrying interest rates as high as 1,000 percent.")

<sup>20</sup> Brief for Petitioners at 44, *AMG Capital Mgmt. LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Sept. 2020), available at [https://www.supremecourt.gov/DocketPDF/19/19-508/154981/20200925174040692\\_19-508%20ts%20AMG%20Capital%20Mgmt.%20LLC%20merits%20brief%20PDF-A.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/154981/20200925174040692_19-508%20ts%20AMG%20Capital%20Mgmt.%20LLC%20merits%20brief%20PDF-A.pdf) ("As an 'agency[y] charged with administering [a] congressional statute[...], both the Commission's 'power to act and how [it is] to act are authoritatively prescribed by Congress.' ... The Commission 'possess[es] only such powers as are granted by' the FTC Act. ... The Commission thus has been acting 'ultra vires' by 'improperly' extracting billions of dollars from defendants under §13(b), a provision that authorizes only 'injunction[s].' ... That overreach should end now.") (internal citations omitted)

<sup>21</sup> 47 U.S.C. § 230.

economically disadvantageous to engage in deceptive marketing and fraud from the outset will there be an impetus for all to champion truth in advertising.

## **II. Truth in Advertising, Inc.**

Truth in Advertising (TINA.org) is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, independent experts, synergy organizations and government agencies to advance countermeasures that effectively prevent and stop deception in our economy.

At the center of TINA.org's efforts is its website, [www.tina.org](http://www.tina.org), which aims to re-boot the consumer movement for the 21<sup>st</sup> century. The site provides information about common deceptive advertising techniques, consumer protection laws and alerts about specific marketing campaigns—such as nationally advertised “Built in the USA” vans manufactured abroad,<sup>22</sup> and pillows and essential oils falsely marketed as able to treat chronic disease.<sup>23</sup> The website functions as a clearinghouse, receiving consumer complaints about suspicious practices, which TINA.org investigates, and, when appropriate, takes up with businesses and regulatory authorities. The website is a repository of information relating to consumer protection lawsuits and regulatory actions.

Through its collaborative approach and attention to emerging issues and complexities, TINA.org has become a trusted source of expertise on matters relating to consumer fraud. TINA.org regularly draws on this expertise to advocate for consumer interests before the FTC

---

<sup>22</sup> Sprinter Summary of Action, <https://www.truthinadvertising.org/sprinter-summary-of-action/> (last visited Feb. 1, 2021).

<sup>23</sup> MyPillow Summary of Action, <https://www.truthinadvertising.org/mypillow-summary-of-action/> (last visited Feb. 1, 2021); doTerra Summary of Action, <https://www.truthinadvertising.org/doterra-summary-action/> (last visited Feb. 1, 2021); Young Living Summary of Action, <https://www.truthinadvertising.org/young-living-summary-action/> (last visited Feb. 1, 2021).



and other governmental bodies and appear as *amicus curiae* in cases raising important questions of consumer protection law.<sup>24</sup>

### III. Fraud, deception and scams during the COVID-19 crisis

During this pandemic, consumers nationwide have been inundated with deceptive marketing campaigns seeking to exploit and capitalize on the global public-health crisis.<sup>25</sup> While some scams deplete bank accounts and retirement savings, others have drastic consequences for consumers' health and safety.

#### a. Deceptive health claims

Deceptive advertising peddling unapproved treatments, cures, and preventatives for a virus that has killed more than 400,000 people in the United States<sup>26</sup> flood the internet. Not only do many of these deceptive ads target particularly susceptible populations, including parents of young children, first responders, military veterans and senior citizens, many also promote products that are inherently dangerous – some can cause severe health consequences while others are advertised as negating the need to follow standard COVID-19 prevention and treatment recommendations, thereby increasing the risk that consumers contract and spread COVID-19 or fail to obtain medically necessary treatment.

<sup>24</sup> For example, TINA.org participated as *amicus* in *AMG Capital Management, LLC v. Federal Trade Commission*, Brief of Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, No. 19-508 (U.S. Dec. 7, 2020), available at [https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389\\_19-508%20brief.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19-508%20brief.pdf). TINA.org also filed an *amici* brief in *Federal Trade Commission v. Quincy Bioscience Holding Co., Inc.*, which reinstated a Section 13(b) suit against a business falsely marketing a dietary supplement to the elderly as clinically proven to improve memory. Brief of Amici Curiae Truth In Advertising, Inc., AARP, AARP Foundation, Advertising Law Academics, and National Consumers League in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.*, 753 Fed. Appx. 87 (2d Cir. 2019) (No. 17-3745), available at [https://www.truthinadvertising.org/wp-content/uploads/2018/03/Prevagen\\_Amici-Curiae-brief.pdf](https://www.truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf).

<sup>25</sup> FTC COVID-19 and Stimulus Reports, available at <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map>.

<sup>26</sup> Will Stone, *As Death Rate Accelerates, U.S. Records 400,000 Lives Lost to the Coronavirus*, NPR, Jan. 19, 2021, <https://www.npr.org/sections/health-shots/2021/01/19/957488613/as-death-rate-accelerates-u-s-records-400-000-lives-lost-to-the-coronavirus>.



Since the initial coronavirus outbreak, TINA.org has invested considerable resources to investigate and track such scams.<sup>27</sup> In February 2020, TINA.org wrote about an ingestible silver solution falsely marketed as able to kill the coronavirus from within. Not only was the treatment claim false, but the marketers also failed to disclose the possible risks of consuming silver, which include cancer and birth defects.<sup>28</sup> A few months later, TINA.org outed more than 40 wellness centers across the country deceptively promoting intravenous supplement/vitamin therapies as a way to prevent and treat COVID-19, several of which specifically targeted first responders.<sup>29</sup> Following this investigation, TINA.org exposed a multilevel marketing company misleadingly marketing supplements as able to boost children's immune systems and keep them "virus free," at a time when parents across the country were grappling with whether or not to send their children back to school.<sup>30</sup>

TINA.org has also tracked reports of industrial bleach advertised under the name "Miracle Mineral Solution" as a treatment for COVID-19,<sup>31</sup> accounts of CBD products marketed to

<sup>27</sup> *A Growing List of Coronavirus Scams*, Truth In Advertising, Inc., Mar. 16, 2020,

<https://www.truthinadvertising.org/a-growing-list-of-coronavirus-scams/>.

<sup>28</sup> *Jim Bakker Show Claims Silver Solution Supplement Kills Coronavirus*, Truth In Advertising, Inc., Feb. 19, 2020,

<https://www.truthinadvertising.org/the-jim-bakker-show-claims-silver-solution-supplement-kills-coronavirus/>.

<sup>29</sup> *IV Therapies and COVID-19: The Drip, Drip, Drip of Deceptive Claims*, Truth In Advertising, Inc., June 3, 2020,

<https://www.truthinadvertising.org/iv-therapies-and-covid-19-the-drip-drip-drip-of-deceptive-claims/>.

<sup>30</sup> *TINA.org Finds Plexus Deceptively Marketing Supplements for Kids*, Truth In Advertising, Inc., Aug. 12, 2020,

<https://www.truthinadvertising.org/tina-org-finds-plexus-deceptively-marketing-supplements-for-kids/>. Several other MLM companies and their distributors have touted their products as a way to prevent getting COVID-19. See, e.g., Herbalife Summary of Action, <https://www.truthinadvertising.org/herbalife-2020-summary-of-action/> (last visited Feb. 1, 2021) and *Mixed Messaging in the MLM Industry Regarding Coronavirus Claims*, Truth In Advertising, Inc., Apr. 14, 2020, <https://www.truthinadvertising.org/mixed-messaging-in-the-mlm-industry-regarding-coronavirus-claims/>.

<sup>31</sup> Press Release, The U.S. Dep't of Justice, Justice Dep't Seeks to End Illegal Online Sale of Indus. Bleach Marketed as "Miracle" Treatment for COVID-19 (Apr. 17, 2020), available at <https://www.justice.gov/opa/pr/justice-department-seeks-end-illegal-online-sale-industrial-bleach-marketed-miracle-treatment>.

military veterans as a coronavirus treatment,<sup>32</sup> and Department of Justice cases and civil lawsuits regarding toothpastes and teeth-whitening products claiming to prevent COVID-19.<sup>33</sup>

It is critical to note that while silver shards suspended in liquid, bleach, CBD, and toothpaste may sound like suspect COVID-19 treatments and cure-alls, one must remember that our country – and the world – is living through a time of unprecedented uncertainty and fear, one that has prompted panic, heightened stress and anxiety levels, and exacerbated mental health issues.<sup>34</sup> Consequently, consumers, desperate to care for themselves and their loved ones, are more susceptible to the compelling and persuasive marketing tactics used to sell these bogus products.

The pandemic has also spurred ads deceptively promoting products aimed at protecting consumers from the virus. TINA.org stopped the maker of alcohol-free hand sanitizers from deceptively claiming that its products “kill” the coronavirus for up to 24 hours.<sup>35</sup> Consumers have also complained of scammers advertising and selling – but never delivering – N95 masks and other PPE.<sup>36</sup> And a TINA.org investigation revealed more than two dozen eBay sellers falsely claiming their face masks were “FDA approved” or illegally using the FDA’s logo on

<sup>32</sup> Fed. Food & Drug Admin. and Fed. Trade Comm’n Warning Letter to Patriot Supreme (Oct. 16, 2020), available at [https://www.ftc.gov/system/files/warning-letters/fda-covid-19-letter-for\\_our\\_vets\\_llc.pdf](https://www.ftc.gov/system/files/warning-letters/fda-covid-19-letter-for_our_vets_llc.pdf).

<sup>33</sup> Press Release, New York State Attorney General, Attorney General James Orders Alex Jones to Stop Selling Fake Coronavirus Treatments (Mar. 12, 2020), available at <https://ag.ny.gov/press-release/2020/attorney-general-james-orders-alex-jones-stop-selling-fake-coronavirus-treatments>; Snow Teeth Whitening, Truth In Advertising, Inc., <https://www.truthinadvertising.org/snow-teeth-whitening/> (last visited Feb. 1, 2021).

<sup>34</sup> Emotional Well-Being and Coping During COVID-19, Univ. of California Weill Institute for Neurosciences Dept. of Psychiatry and Behavioral Sciences, <https://psychiatry.ucsf.edu/copingresources/covid19> (last visited Feb. 1, 2021); Nirmita Panchal et al., *The Implications of COVID-19 for Mental Health and Substance Use*, Henry J. Kaiser Family Foundation, Aug. 21, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>; Bilal Javed et al., *The Coronavirus (COVID-19) Pandemic’s Impact on Mental Health*, Int. J. Health Plann Mgmt., June 22, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7361582/>.

<sup>35</sup> TINA.org’s Letter to Everest Microbial Defense, available at [https://www.truthinadvertising.org/wp-content/uploads/2020/05/4\\_30\\_20-TINA-warning-ltr-to-Everest-Microbial-Defense\\_Redacted.pdf](https://www.truthinadvertising.org/wp-content/uploads/2020/05/4_30_20-TINA-warning-ltr-to-Everest-Microbial-Defense_Redacted.pdf).

<sup>36</sup> Press Release, The U.S. Dep’t of Justice, Michigan Man Charged with COVID-19-Related Wire Fraud Scheme (Apr. 28, 2020), available at <https://www.justice.gov/usao-mdca/pr/michigan-man-charged-covid-19-related-wire-fraud-scheme>.

product packaging or other marketing to boost sales.<sup>37</sup> There have also been numerous reports of schemes targeting older Americans, including the offering of sham “COVID Wellness Kits” containing hand sanitizer and/or face masks to Medicare beneficiaries in order to steal their Medicare numbers and other personal identifying information.<sup>38</sup>

These deceptive advertising tactics not only scam consumers out of their hard-earned money, but may leave consumers unnecessarily vulnerable to the COVID-19 virus. In short, the surge in exploitative health schemes employed during this pandemic have risked, and continue to risk, the health and safety of consumers across the country.

#### **b. Fraudulent economic claims**

Unfortunately, pandemic-related deception does not stop with outrageous health claims; many are also exploiting the economic desperation brought on by this pandemic. TINA.org has exposed – in news stories,<sup>39</sup> regulatory complaints<sup>40</sup> and a warning letter<sup>41</sup> – numerous MLM companies taking advantage of the pandemic to promote what they claim to be lucrative business opportunities despite the fact that most people who get involved in multilevel marketing make little to no money.<sup>42</sup>

<sup>37</sup> *Face Mask Sellers on eBay Falsely Claim Products Are ‘FDA Approved’*, Truth In Advertising, Inc., May 13, 2020, <https://www.truthinadvertising.org/face-mask-sellers-on-ebay-falsely-claim-products-are-fda-approved/> (last visited Feb. 1, 2021).

<sup>38</sup> Katherine Skiba, *Pandemic Scammers Target Older Americans on Medicare*, AARP, July 8, 2020, <https://www.aarp.org/money/scams-fraud/info-2020/medicare-scams-coronavirus.html>.

<sup>39</sup> *MLMs Continue to Break the Law Despite FTC Warning*, Truth In Advertising, Inc., Dec. 15, 2020, <https://www.truthinadvertising.org/mlms-continue-to-break-the-law-despite-ftc-warning/>.

<sup>40</sup> Beautycounter Summary of Action, <https://www.truthinadvertising.org/beautycounter-summary-action/> (last visited Feb. 1, 2021).

<sup>41</sup> Market America Summary of Action, <https://www.truthinadvertising.org/market-america-summary-action/> (last visited Feb. 1, 2021).

<sup>42</sup> *How MLMs Exploit Consumers During a Pandemic*, Truth In Advertising, Inc., Apr. 27, 2020, <https://www.truthinadvertising.org/how-mlms-exploit-consumers-during-a-pandemic/>; Market America Summary of Action, <https://www.truthinadvertising.org/market-america-summary-action/> (last visited Feb. 1, 2021); Beautycounter Summary of Action, <https://www.truthinadvertising.org/beautycounter-summary-action/> (last visited Feb. 1, 2021). See also Press Release, Fed. Trade Comm’n, FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus (Apr. 24, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health>; Press Release, Fed. Trade Comm’n, FTC Sends Second Round of Warning Letters to



TINA.org also sounded the alarm regarding investment news publisher Agora, Inc. for exploiting financial uncertainties during the pandemic to lure consumers – predominantly senior citizens – into pricey newsletter subscriptions with automatic renewals.<sup>43</sup> There have also been reports of lending companies deceptively using the CARES Act to exploit debt-laden college students;<sup>44</sup> financial entities pretending to be SBA-authorized lenders to lure in small businesses struggling to keep their workers employed;<sup>45</sup> and investment scams claiming to have patented COVID cures.<sup>46</sup>

As with the onslaught of deceptive health claims, marketers making unsubstantiated financial claims have similarly targeted vulnerable populations including retirees, students in debt, and small businesses struggling to stay afloat during this pandemic.

#### **IV. The need for equitable relief under section 13(b) of the FTC Act**

During these unprecedented times, it is imperative that the FTC not only stop deceptive marketing as quickly as possible but also expeditiously return ill-gotten gains to victims struggling to make ends meet. At present, the Commission’s only resource for accomplishing such twin objectives is Section 13(b).

---

Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims (June 5, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus>.

<sup>43</sup> *Agora Coronavirus Emails*, Truth In Advertising, Inc., Mar. 27, 2020, <https://www.truthinadvertising.org/agora-coronavirus-emails/>. See also, *Fed. Trade Comm’n v. Agora Financial, LLC*, No. 19-cv-3100 (D. Md.), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3116/agora-financial-llc>.

<sup>44</sup> *Fed. Trade Comm’n Warning Letter to Frank Financial Aid* (Nov. 10, 2020), available at [https://www.ftc.gov/system/files/warning-letters/covid-19-letter\\_to\\_frank.pdf](https://www.ftc.gov/system/files/warning-letters/covid-19-letter_to_frank.pdf).

<sup>45</sup> *Fed. Trade Comm’n and Small Bus. Admin. Warning Letter to TF Group, Inc. d/b/a Taycor Financial* (June 22, 2020), available at [https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-taycor\\_financial.pdf](https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-taycor_financial.pdf), [https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-sbadisasterloan.org\\_.pdf](https://www.ftc.gov/system/files/warning-letters/sba-covid-19-letter-sbadisasterloan.org_.pdf).

<sup>46</sup> Press Release, The U.S. Dep’t of Justice, Southland Man Arrested on Federal Charges Alleging Fraudulent Investment Scheme Featuring Bogus Claims of COVID-19 Cure (Mar. 25, 2020), available at <https://www.justice.gov/usao-cdca/pr/southland-man-arrested-federal-charges-alleging-fraudulent-investment-scheme-featuring>.

Congress, realizing that the FTC's slow-moving administrative regime did not protect consumers from imminent harm and deception, added Section 13(b) to the FTC Act in 1973 to provide the Agency with a fast and effective means to halt illegal conduct.<sup>47</sup> Section 13(b) provides, in pertinent part, that the FTC "may seek, and after proper proof, the court may issue, a permanent injunction."<sup>48</sup>

Though the statute does not specifically reference equitable relief, until the Seventh Circuit's decision in *FTC v. Credit Bureau Center*,<sup>49</sup> every circuit court to consider the issue (including the Seventh Circuit 30 years ago) had held that Section 13(b) implicitly authorizes a wide range of equitable remedies, including restitution, rescission and disgorgement.<sup>50</sup> The rationale for equitable relief was first articulated in the 18th century when courts recognized that the authority to issue an injunction carried with it the right to make victims whole because, as they reasoned, "the wrong-doer should not profit 'by his own wrong.'" While the issue of whether 13(b) provides for equitable relief is now pending before the U.S. Supreme Court in the *AMG v. FTC* case,<sup>51</sup> the scope of 13(b) could – and should – be resolved legislatively.

The FTC brought its first case for a 13(b) permanent injunction in 1979. Since then, 13(b) has become a mainstay of the FTC's enforcement program with dozens of cases brought under

<sup>47</sup> See *Fed. Trade Comm'n v. Shire*, 917 F.3d 147, 155 (3d Cir. 2019), available at <https://www2.ca3.uscourts.gov/opinarch/181807p.pdf>. ("Section 13(b) thus empowers the FTC to speedily address ongoing or impending illegal conduct, rather than wait for an administrative proceeding to conclude.")

<sup>48</sup> 15 U.S.C. § 53.

<sup>49</sup> *Fed. Trade Comm'n v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019), available at <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D08-21/C:18-2847-J:Sykes:aut:T:fnOp:N:2387210:S:0>.

<sup>50</sup> After *Credit Bureau*, the Third Circuit held that Section 13(b) of the FTC Act does not permit equitable relief. See *Fed. Trade Comm'n v. AbbVie Inc.*, 976 F.3d 327, 376 (3d Cir. 2020), available at <https://www2.ca3.uscourts.gov/opinarch/182621p.pdf> ("If Congress contemplated the FTC could sue for disgorgement under Section 13(b), it probably would not have required the FTC to show an imminent or ongoing violation. That requirement suggests Section 13(b) does not empower district courts to order disgorgement.")

<sup>51</sup> *AMG Capital Mgmt. v. Fed. Trade Comm'n*, No. 19-508 (U.S.), available at <https://www.supremecourt.gov/docket/docketfiles/html/public/19-508.html>.

this section every year – among them Volkswagen,<sup>52</sup> Herbalife,<sup>53</sup> DeVry University,<sup>54</sup> Office Depot<sup>55</sup> and Uber.<sup>56</sup> In fact, from 2016 to 2020, the FTC returned approximately \$1.1 billion to consumers using 13(b).<sup>57</sup> As the coronavirus pandemic continues to ravage our nation, the need for Section 13(b)'s swift and equitable authority is greater than ever.

Moreover, a decision in *AMG*'s favor will have dramatic and dire consequences for the dozens of Section 13(b) cases the FTC currently has pending.<sup>58</sup> The FTC's docket includes its antitrust complaint against Facebook,<sup>59</sup> pyramid scheme cases against Neora<sup>60</sup> and Success By Health,<sup>61</sup> its case against the makers of the deceptively marketed memory supplement Prevacen,<sup>62</sup> and the action it filed against a house-flipping scam, which includes real estate

<sup>52</sup> Press Release, Fed. Trade Comm'n, Volkswagen to Spend up to \$14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles (June 28, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating>.

<sup>53</sup> Press Release, Fed. Trade Comm'n, Herbalife Will Restructure Its Multi-level Marketing Operations and Pay \$200 Million For Consumer Redress to Settle FTC Charges (July 15, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations>.

<sup>54</sup> Lesley Fair, *FTC Case Against DeVry Yields \$100 Million Settlement*, Fed. Trade Comm'n, available at <https://www.ftc.gov/news-events/blogs/business-blog/2016/12/ftc-case-against-devry-yields-100-million-settlement>.

<sup>55</sup> Press Release, Fed. Trade Comm'n, FTC Sending More Than \$34 Million in Refunds to Office Depot Customers (Feb. 20, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-sending-more-34-million-refunds-office-depot-customers>.

<sup>56</sup> Press Release, Fed. Trade Comm'n, FTC to Send Refund Checks to Uber Drivers as Part of FTC Settlement (July 16, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-send-refund-checks-uber-drivers-part-ftc-settlement>.

<sup>57</sup> Recent FTC Cases Resulting in Refunds, <https://www.ftc.gov/enforcement/cases-proceedings/refunds> (last visited Feb. 1, 2021).

<sup>58</sup> As of mid-2020, the FTC was a party to 56 Section 13(b) cases pending in federal district court. Brief for the Federal Trade Commission, *AMG Capital Mgmt. LLC, et al. v. Fed. Trade Comm'n*, No. 19-508 (U.S. Nov. 30, 2020), available at [https://www.supremecourt.gov/DocketPDF/19/19-508/162011/20201130120930570\\_19-508bs.pdf](https://www.supremecourt.gov/DocketPDF/19/19-508/162011/20201130120930570_19-508bs.pdf).

<sup>59</sup> *Fed. Trade Comm'n v. Facebook, Inc.*, No. 19-0134 (D.D.C.), available at <https://www.ftc.gov/enforcement/cases-proceedings/191-0134/facebook-inc-ftc-v>.

<sup>60</sup> Press Release, Fed. Trade Comm'n, FTC Sues Multi-Level Marketer Neora, formerly known as Nerium, Alleging it Operates as an Illegal Pyramid Scheme (Nov. 1, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/11/ftc-sues-multi-level-marketer-neora-formerly-known-nerium>.

<sup>61</sup> Press Release, Fed. Trade Comm'n, FTC Acts to Shut Down 'Success by Health' Instant Coffee Pyramid Scheme (Jan. 16, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/01/ftc-acts-shut-down-success-health-instant-coffee-pyramid-scheme>.

<sup>62</sup> Press Release, Fed. Trade Comm'n, FTC, New York State Charge the Marketers of Prevacen With Making Deceptive Memory, Cognitive Improvement Claims (Jan. 9, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-new-york-state-charge-marketers-prevagen-making-deceptive>.



celebrities Dean Graziosi and Scott Yancey as defendants.<sup>63</sup> In all of these 13(b) cases the FTC will be foreclosed from seeking monetary relief, even if it prevails, if the Supreme Court rules in *AMG*'s favor.

And to make matters worse, in 2019, the Third Circuit Court of Appeals ruled in *FTC v. Shire ViroPharma, Inc.* that the FTC could not seek equitable relief under Section 13(b) if the alleged violation occurred in the past and the defendant was not “violating” or “about to violate” the law.<sup>64</sup> As a result, wrongdoers that line their pockets with money they have illegally obtained can sail off into the sunset just as long as they retire their scams before the FTC catches up with them.

In order to effectively police wrongdoers and protect consumers, legislative action must be taken to give the FTC the authority it needs to obtain monetary remedies for past acts as well as present ones. The glaring reality is that unless Congress acts, the FTC may be left with a law giving the worst wrongdoers an absolute right to retain funds they took from unwitting victims, which will undoubtedly make consumers and the economy more vulnerable to harm.

#### **V. Equipping the FTC with penalty authority**

The common thread that runs through all COVID-19 scams is the wrongdoers' desire for financial gain. At the same time, the FTC is powerless to issue penalties for first-time violations of the FTC Act regardless of how outrageous and harmful the scam may be. Equipping the FTC with the ability to issue civil penalties would serve as a valuable deterrent against deliberate,

<sup>63</sup> Press Release, Fed. Trade Comm'n, FTC Seeks to Add Real Estate Inv. Celebrities Dean Graziosi and Scott Yancey as Defendants in Real Estate Training Case (Aug. 31, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/08/ftc-seeks-add-real-estate-investment-celebrities-dean-graziosi>.

<sup>64</sup> *Fed. Trade Comm'n v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3d Cir. 2019), available at <https://www2.ca3.uscourts.gov/opinarch/181807p.pdf>.

egregious violators that are using this pandemic to take advantage of some of the most vulnerable populations in our society.

The FTC has nationwide jurisdiction and an unparalleled view of the landscape. It maintains data on millions of consumer complaints and has unique statutory authority to operate across national borders. Even with its finite resources, the FTC is able to undertake investigations and develop facts necessary to prove cases against sophisticated corporate wrongdoers for large illegalities. But this is where the agency's efficacy ends. The FTC's ability to hold offenders accountable for their transgressions is sorely lacking.

Time and again, the FTC is forced to bring a second action against a lawbreaker because the company found it economically advantageous to ignore the initial consent agreement<sup>65</sup> or closing letter.<sup>66</sup> Not only does this waste the FTC's limited resources but it ensures that illegal behavior continues to exploit consumers for longer than is necessary. Until the FTC has the authority to

---

<sup>65</sup> Facebook entered into a consent agreement with the FTC in 2012 requiring the social media platform to stop its illegal practice of disclosing unauthorized private, identifying user information. See Decision and Order, *In the Matter of Facebook, Inc.*, No. 19-cv-2184 (D.D.C. July 27, 2012), available at <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookdo.pdf>. Unable to penalize Facebook for its transgressions, the FTC only obtained a promise that Facebook would abide by the law going forward. As this reprimand was effectively toothless, Facebook reverted to its deceptive privacy practices, requiring the FTC to file a complaint in federal court in 2019 to hold the platform accountable yet again for its failure to follow the law and protect consumers' privacy. See Complaint for Civil Penalties, Injunction, and Other Relief, *U.S.A. v. Facebook, Inc.*, No. 19-cv-2184 (D.D.C. July 24, 2019), available at [https://www.ftc.gov/system/files/documents/cases/182\\_3109\\_facebook\\_complaint\\_filed\\_7-24-19.pdf](https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_complaint_filed_7-24-19.pdf). Only at this point, was the FTC able to punish Facebook with a \$5 billion penalty. Had the FTC been able to penalize Facebook initially, it is likely that consumer privacy rights would have been better protected years earlier and Facebook less likely to flout the law.

<sup>66</sup> In June 2018, the FTC sent a closing letter to Williams-Sonoma following an investigation into the company's marketing of certain Chinese-made products as "Crafted in America." Fed. Trade Comm'n Closing Letter to Williams-Sonoma, Inc. (June 13, 2018), available at [https://www.ftc.gov/system/files/documents/closing\\_letters/nid/musa\\_williams-sonoma\\_closing\\_letter.pdf](https://www.ftc.gov/system/files/documents/closing_letters/nid/musa_williams-sonoma_closing_letter.pdf). The FTC did not pursue its investigation due to the company's corrective actions and assurances that it was an isolated error. This representation was false. Between April and May 2019, TINA.org collected more than 800 examples of products that were marketed as made in the USA but were either imported or made with imported materials. (Examples collected were drawn from seven of Williams-Sonoma's sites — Williams-Sonoma, Williams-Sonoma Home, Rejuvenation, Pottery Barn, PBteen, Pottery Barn Kids and West Elm.) As a result of these findings, the FTC filed an administrative action against Williams-Sonoma, which settled the charges for \$1 million. Decision, *In the Matter of Williams-Sonoma, Inc.*, No. C-4724 (F.T.C. July 13, 2020), available at <https://www.ftc.gov/system/files/documents/cases/2023025c4724williamssonomaorder.pdf>. See also, TINA.org's Petition for Rulemaking to Promulgate Regulations for Made in the USA Claims, [https://www.truthinadvertising.org/wp-content/uploads/2019/08/TINA\\_org-Petition-for-Rulemaking-to-Promulgate-Regulations-for-Made-in-the-USA-Claims.pdf](https://www.truthinadvertising.org/wp-content/uploads/2019/08/TINA_org-Petition-for-Rulemaking-to-Promulgate-Regulations-for-Made-in-the-USA-Claims.pdf).



turn on the penalty switch in appropriate cases, companies will find it highly profitable to flout FTC laws.

Further, penalties are a vital necessity in cases in which the precise economic harm to consumers is difficult to measure. For example, penalty authority could have a major impact on social media influencer marketing where influencers frequently do not disclose their material connections to the brands they promote. TINA.org's investigations of the Kardashians,<sup>67</sup> Ciroc,<sup>68</sup> and influencers on Instagram who received FTC warning letters<sup>69</sup> are illustrative of the problem. If companies and influencers were exposed to monetary penalties each time a promotional post failed to adequately disclose the material connection at issue, social media marketers would be less likely to deceive consumers, many of who are children and young adults.<sup>70</sup>

#### **VI. The need for a civil penalty fund**

The benefits of imposing penalties do not need to stop at deterring wrongdoers from repeating illegal acts. If authorized, the FTC could use penalty funds to make consumers, who have been economically harmed, monetarily whole again.

At present, FTC redress is limited to the amount of money it can obtain directly from the wrongdoer(s). But because many defendants have the means and inclination to dissipate assets through lavish spending, bankruptcy protection, hiding funds in inaccessible accounts/locations, or are otherwise insolvent, it is often the case that consumers who have a right to redress receive

---

<sup>67</sup> Kardashian/Jenner et al. Summary of Action, <https://www.truthinadvertising.org/kardashian-summary-action/> (last visited Feb. 1, 2021).

<sup>68</sup> Ciroc Summary of Action, <https://www.truthinadvertising.org/ciroc-summary-action/> (last visited Feb. 1, 2021).

<sup>69</sup> Instagram Influencers Summary of Action, <https://www.truthinadvertising.org/influencers-ftc-complaint-summary-action/> (last visited Feb. 1, 2021).

<sup>70</sup> Of course, any such legislation should give the FTC discretion so that nano-influencers and micro-influencers with smaller followings are not treated the same as sophisticated, career influencers who know their legal responsibilities.

pennies on the dollar, if they receive anything.<sup>71</sup> It is for this exact reason that other federal agencies use collected penalty funds to compensate victims, including the Consumer Financial Protection Bureau's Civil Penalty Fund<sup>72</sup> and the SEC's Fair Fund.<sup>73</sup>

For the sake of providing complete and timely consumer redress, particularly now when many in our country are in an economic freefall and consumers do not have the luxury of time, the FTC should be authorized to establish such a consumer reimbursement fund, rather than being required to arbitrarily deposit penalties in the U.S. Treasury, as is the current practice.<sup>74</sup>

## VII. Additional considerations to better protect consumers during the pandemic

TINA.org would also like to highlight areas of law that may be strengthened to better protect consumers with respect to online marketing during this pandemic.

<sup>71</sup> See, e.g., Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendants Carey G. Howe, Anna C. Howe, Shunmin Hsu, Ruddy Palacios, and Oliver Pomazi, *Fed. Trade Comm'n v. Arete Financial Group, et al.*, No. 19-cv-2109 (C.D. Cal. Sept. 9, 2020), available at [https://www.ftc.gov/system/files/documents/cases/145\\_order\\_for\\_perm\\_inj\\_as\\_to\\_arete\\_defs\\_anna\\_howe\\_2020-09-10.pdf](https://www.ftc.gov/system/files/documents/cases/145_order_for_perm_inj_as_to_arete_defs_anna_howe_2020-09-10.pdf) (monetary judgment of \$43.3 million partially suspended upon surrender of at least \$835,000 and additional assets). See also, Press Release, Operators of Student Debt Relief Scheme Agrees to Pay at Least \$835,000 to Settle FTC Allegations (Sept. 9, 2020), <https://www.ftc.gov/news-events/press-releases/2020/09/operators-student-debt-relief-scheme-agree-pay-least-835000>; Redacted Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendants Mark Gelvan, Outreach Calling, Inc., Outsource 3000, Inc., and Production Consulting Corp., *Fed. Trade Comm'n v. Outreach Calling Inc., et al.*, No. 20-cv-7505 (S.D.N.Y. Oct. 26, 2020), available at [https://www.ftc.gov/system/files/documents/cases/de\\_42\\_-\\_redacted\\_order\\_as\\_to\\_gelvan\\_and\\_corporations\\_entered.pdf](https://www.ftc.gov/system/files/documents/cases/de_42_-_redacted_order_as_to_gelvan_and_corporations_entered.pdf) (monetary judgment of \$56,023,481, which is partially suspended based on inability to pay.). See also, Press Release, FTC Joins Four States in Action to Shut Down Alleged Sham Charity Funding Operation That Bilked Millions from Consumers (Sept. 16, 2020), <https://www.ftc.gov/news-events/press-releases/2020/09/ftc-joins-four-states-to-shut-down-alleged-sham-charity-operation>; Stipulated Order for Permanent Injunction and Monetary Judgment Against Vemma Nutrition Co. Vemma International Holdings, Inc. and Benson K. Boreyko, *Fed. Trade Comm'n v. Vemma*, No. 15-cv-1578 (D. Ariz. Dec. 20, 2016), available at [https://www.ftc.gov/system/files/documents/cases/161222\\_vemma\\_273-stipulated\\_final\\_order\\_redacted.pdf](https://www.ftc.gov/system/files/documents/cases/161222_vemma_273-stipulated_final_order_redacted.pdf) (\$238 million judgment partially suspended upon payment of \$470,136). See also, Press Release, Vemma Agrees to Ban on Pyramid Scheme Practices to Settle FTC Charges (Dec. 15, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/vemma-agrees-ban-pyramid-scheme-practices-settle-ftc-charges>.

<sup>72</sup> Civil Penalty Fund, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/civil-penalty-fund/> (last visited Feb. 1, 2021).

<sup>73</sup> 15 U.S.C. § 7246.

<sup>74</sup> See, e.g., Press Release, Fed. Trade Comm'n, FTC Brings First-Ever Cases Under the BOTS Act (Jan. 22, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act>.

**a. Require funeral homes to disclose their pricing online**

More than 400,000 individuals have died of COVID-19.<sup>75</sup> And the overwhelming grief of family members forced to put their loved ones to rest during this pandemic is exacerbated by the fact that funeral service providers are not required to post their price lists on their websites. Funeral service providers who advertise online should be required by law to post their price lists on their websites in order to conform to consumers' shopping behavior and allow consumers to meaningfully price-shop from the comfort of their own homes before committing to a purchase.<sup>76</sup>

Not only are transactions in the funeral industry inherently fraught with emotion and stress, they are also ones with which consumers tend to have little experience or familiarity and ones that require making important and costly decisions under tight time constraints. Moreover, such a law would also allow the FTC to more easily review funeral homes' sales and business practices without imposing any significant burden on the funeral service providers.<sup>77</sup>

**b. Require companies that use negative-option offers to simplify cancellation and provide clearer renewal information**

As U.S. consumers shelter at home during this pandemic, many are turning to online shopping for their purchasing needs – from PPE to toilet paper to grocery items and medication. Inevitably, some are also unintentionally enrolling in unwanted negative-option offers that siphon money off of already strained budgets.<sup>78</sup> Unfortunately, deceptive negative-option offers have become a multibillion-dollar industry. On a regular basis, consumers find that they have

<sup>75</sup> Patricia Mazzei, *Coronavirus Death Toll in the U.S. Passes 400,000*, N.Y. Times, Jan. 19, 2021, <https://www.nytimes.com/2021/01/19/us/coronavirus-deaths-usa-400000.html>.

<sup>76</sup> Such a rule would also align with stay-at-home recommendations during the COVID-19 outbreak. See also TINA.org's Funeral Rule Comment, <https://www.truthinadvertising.org/wp-content/uploads/2020/06/TINA-Funeral-Rule-Comment.pdf>.

<sup>77</sup> See FTC's Media Resources for the Funeral Rule, <https://www.ftc.gov/news-events/media-resources/truth-advertising/funeral-rule> (last visited Feb. 1, 2021).

<sup>78</sup> Consumer complaints (very often from senior citizens) concerning negative-option offers are one of the most common types of complaints that TINA.org receives. Consumers generally complain about unwittingly being enrolled in a negative-option plan and then finding it impossible to cancel the subscription.



been charged for long-forgotten subscriptions,<sup>79</sup> or that they are unable to cancel a trial before being charged. Indeed, losses relating to such offers in just 14 cases the FTC pursued over the past decade have totaled more than \$1 billion.<sup>80</sup>

Companies that use negative-option offers should be required to (1) permit consumer cancelation of negation options in an easy and specific manner – at minimum, if the subscription was entered into online, then it should be able to be canceled online,<sup>81</sup> (2) provide timely reminders to consumers before recurring charges are initiated,<sup>82</sup> and (3) notify consumers of any material changes to the terms of a subscription and provide an opportunity to cancel the subscription before the terms go into effect.<sup>83</sup>

Recognizing the multitude of consumer vulnerabilities associated with negative-option offers, two bills were introduced in the 116<sup>th</sup> U.S. House of Representatives – the Unsubscribe Act (116 H.R. 2683) and TRUE Fees Act (116 H.R. 1220) – which sought to address various aspects of negative-option offers. The passage of such bills would provide significant and meaningful protection to consumers unwittingly enrolled in negative-option offers.

<sup>79</sup> This issue is likely exacerbated, in part, by increasing rates of digitization: without a physical item, like a book, arriving in the mail, or paying by writing a check, the only indication a consumer may have of a long-forgotten, converted subscription is an ambiguously labelled, recurring charge on their credit card. See Sophia Wang, *One Size Does Not Fit All: The Shortcomings of Current Negative Option Legislation*, 26 Cornell J. L. & Pub. Pol’y 197, 200 (Fall 2016).

<sup>80</sup> See *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, Better Business Bureau, 2 (Dec. 2018), available at <https://www.bbb.org/globalassets/local-bbbs/council-113/media/bbb-study-free-trial-offers-and-subscription-traps.pdf>.

<sup>81</sup> ROSCA mandates only that, for goods and services offered on the internet, there be “simple mechanisms for a consumer to stop recurring charges,” but provides no specifics and no requirement that cancelation be online. See 15 U.S.C. §8403(3).

<sup>82</sup> When consumers relinquish control, they incur the additional burden of tracking their various subscriptions. If a consumer forgets about an expiring trial or a recurring charge, it can result in an inefficient allocation of consumer resources. Indeed, 48 percent of consumers have had a free trial convert to a paid subscription without realizing it. See Brady Porche, *Poll: Recurring charges are easy to start, hard to get out of*, Creditcards.com (Aug. 22, 2017), available at <https://www.creditcards.com/credit-card-news/autopay-poll.php>.

<sup>83</sup> See TINA.org’s Comment to the FTC regarding Negative Option Offer Rule, [https://www.truthinadvertising.org/wp-content/uploads/2019/12/12\\_2\\_19-comment-to-FTC-re-NOO-Rule.pdf](https://www.truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf).

Moreover, legislation that prohibits marketers from surreptitiously tying “free” trial offers to future, ongoing charges would be beneficial. TINA.org continually receives complaints from consumers who report being charged repeatedly after signing up for what they thought was a free trial offer.<sup>84</sup> Unless further action is taken to protect consumers, the trend of consumers being unwittingly trapped in deceptive trial offers and automatically renewing subscriptions will only grow.

**c. Exclude Section 230 of the Communications Decency Act protection for commercial speech**

When Section 230 of the Communications Decency Act was enacted in 1996, neither Google nor Facebook existed and Amazon had just arrived on the scene as an online bookseller. The law was enacted to protect young internet service providers at a time when the world wide web was just beginning to gain popularity;<sup>85</sup> protecting multibillion-dollar companies from liability for deceptive marketing statements made about products sold on their websites and from which they profit was not on the agenda.

However, fast-forward 25 years, and that is exactly what Amazon and others argue – that Section 230 shields them from liability for the deceptive marketing statements that lure consumers to purchase bogus products sold on their websites by third parties and from which these shopping platforms turn a handsome profit. Such unfettered impunity has led to widespread

---

<sup>84</sup> Between 2015 and 2017, consumer complaints about free trials more than doubled in the U.S. Over that same span, the Better Business Bureau identified nearly 37,000 complaints – the average loss being \$186. The FBI’s Internet Crime Complaint Center also recorded a rise in complaints about free trial offers between 2015 and 2017, with losses totaling more than \$15 million over that time span. Corresponding with this consumer dissatisfaction, more than 100 federal class actions have been filed on behalf of U.S. consumers complaining about various negative option terms and conditions since 2014. And during this same time period, the FTC has brought 23 cases under ROSCA and pursued at least 5 cases against payment processors linked to deceptive negative option and free trial offers. See TINA.org’s Comment to the FTC regarding Negative Option Offer Rule, [https://www.truthinadvertising.org/wp-content/uploads/2019/12/12\\_2\\_19-comment-to-FTC-re-NOO-Rule.pdf](https://www.truthinadvertising.org/wp-content/uploads/2019/12/12_2_19-comment-to-FTC-re-NOO-Rule.pdf).

<sup>85</sup> U.S. Dep’t of Justice, *Section 230 – Nurturing Innovation or Fostering Unaccountability?: Key Takeaways and Recommendations* (June 2020), available at <https://www.justice.gov/file/1286331/download>.

deceptive marketing issues online, issues that will continue to multiply at an unprecedented rate as consumers pivot to online shopping as a result of the COVID-19 pandemic.<sup>86</sup>

By way of example, Amazon actively promotes and profits from more than 100 deceptively marketed brain supplements primarily sold to senior citizens on its website.<sup>87</sup> Amazon is not just turning a blind eye to claims that these unproven products improve memory, among other purported health benefits, it is actively promoting these claims by independently publishing its own marketing content to amplify the deceptive marketing messages of third-parties.<sup>88</sup>

Similarly, a TINA.org investigation found that the e-commerce website eBay was promoting more than two dozen eBay sellers spanning 45 listings that falsely claimed their face masks were “FDA approved” and/or illegally used the FDA’s logo to boost sales of their products.<sup>89</sup> eBay was not only allowing the sale of these falsely marketed face masks, it was also giving some items greater exposure by listing them as “sponsored” or “promoted products” in exchange for a fee.

To date, online department stores like Amazon and eBay have largely succeeded in fending off all attempts to hold them accountable for false and deceptive commercial speech on their

---

<sup>86</sup> United Nations Conference on Trade Dev., *COVID-19 has changed online shopping forever, survey shows* (Oct. 8, 2020), available at <https://unctad.org/news/covid-19-has-changed-online-shopping-forever-survey-shows>; Press Release, Research and Mkts., *COVID-19 Impact on e-Commerce & Online Payments Worldwide, 2020 – Online Shopper Penetration Increases During the Pandemic* (May 29, 2020), available at <https://www.globenewswire.com/news-release/2020/05/29/2040716/0/en/COVID-19-Impact-on-e-Commerce-Online-Payments-Worldwide-2020-Online-Shopper-Penetration-Increases-During-the-Pandemic.html>.

<sup>87</sup> *How Amazon Promotes, Profits from Deceptively Marketed Brain Supplements*, Truth In Advertising, Inc., Jan. 16, 2020, <https://www.truthinadvertising.org/how-amazon-promotes-profits-from-deceptively-marketed-brain-supplements/>.

<sup>88</sup> Deceptive health claims are given increased visibility on the website through sponsored search results, designations such as “Amazon’s Choice” and “Editorial recommendations,” star ratings, and other Amazon-specific marketing materials. Amazon also plays an important role in the processing of many of these deceptively marketed brain supplements, collecting customer shipping information, fulfilling orders and even gift-wrapping some items when requested.

<sup>89</sup> *Face Mask Sellers on eBay Falsely Claim Products are ‘FDA Approved’*, Truth In Advertising, Inc., May 13, 2020, <https://www.truthinadvertising.org/face-mask-sellers-on-ebay-falsely-claim-products-are-fda-approved/>.

websites using Section 230 as their impenetrable defense shield.<sup>90</sup> Removing this bulwark from online commercial speech would allow the FTC to hold online stores to the same legal standards as brick and mortar stores, and ensure that online websites are held accountable for the deceptive marketing they promote and profit from.

#### **VIII. CONCLUSION**

Deceptive marketing and similar forms of commercial dishonesty are a scourge of the American economy, inflicting billions of dollars in losses to cheated consumers and distorting the efficient allocation of resources, rewarding those who hone ingenious frauds and punishing honest competitors. Many of the deceptive marketing schemes and frauds exploiting the COVID-19 pandemic go well beyond inflicting economic injuries – they result in physical harm and in some instances even death. Consumers are foregoing appropriate preventative measures and medically advantageous treatments for useless products that are falsely marketed. At this juncture, there is a real risk that the deceptive marketing practices enumerated today will only multiply as the agency primarily charged with policing these deceptive acts and practices, the FTC, lacks the necessary authority to claw back ill-gotten gains, punish egregious wrongdoers and fully reimburse victims of fraud.

TINA.org looks forward to working with the Subcommittee and Congress to address the issues articulated above, and I would be happy to answer your questions.

---

<sup>90</sup> A push has begun to remove certain elements of Section 230 protection from online commercial speech. For example, the Country Of Origin Labeling Online Act, or COOL Online Act (S. 3707), which sought to require clear disclosure of seller location and country-of-origin labeling for products advertised online, was introduced in the 116<sup>th</sup> Congress.

Ms. SCHAKOWSKY. Thank you. Thank you for your testimony. And next we will hear—and thank you so very much for that really compelling, compelling testimony. And now let me call on Ms. Ponto.

You are recognized now for 5 minutes.

#### **STATEMENT OF TRACI PONTO**

Ms. PONTO. Thank you. Good afternoon, Members of Congress. Thank you for inviting me here today to talk to you about our organization and what is happening in the world of scams and frauds over this past 2020 season.

First, let me introduce myself. My name is Traci Ponto. I am a retired Spokane police officer, after serving 25 years. I now work full-time as a crime victim advocate for Spokane Community Oriented Policing Services.

Spokane COPS is the nonprofit organization for the Spokane Police Department. We have 5 staff members, 400 volunteers, and 9 COPS shops throughout our city. Our COPS shops serve as a liaison between the police department and our communities and provide a location for neighbors to come in and seek assistance with their concerns. Our COPS shops provide programs such as block watch, identity theft and fraud victim callbacks, neighborhood observation patrols, and other programs that work on getting neighbors engaged in their community, working alongside law enforcement, and taking ownership and keeping their communities safe.

Our organization focuses on crime prevention and working with neighbors to help resolve quality-of-life issues. In a time where our Nation is asking questions on how to get our law enforcement and community working together, our focus is to help educate the community and provide crime prevention tips to help solve many of their concerns.

My current position as a crime victim advocate is to help any and all victims of crime. Law enforcement is able to go after the criminals, but who takes care of those that are victimized? Many people feel unsafe after being victimized. And, as an advocate, we are able to help restore some of that sense of safety by providing a crime prevention through environmental design survey, amongst other services.

When you are a victim of identity theft and fraud, you are incredibly vulnerable to losing your money, which is what supports your daily life. Our advocates' primary goals are to respond to the emotional, psychological, and physical needs of crime victims. We assist victims in stabilizing their lives after victimization and help them understand and participate in the criminal justice system. Our goal is to restore a measure of security and safety for them.

In 2020 many victims found themselves losing their employment or working from home. With quarantine and social distancing, victims found themselves doing more of their shopping online. Victim advocates saw an increase in identity theft, fraud, and scams with this vulnerable population. Phishing scams targeted victims by claiming they were trying to process Amazon returns and needed more personal information. Microsoft scams targeted victims using threats of subscriptions expiring, which would disrupt people trying to work online from home. Unemployment fraud, where databases



were hacked, personal information stolen, and fraudulent unemployment claims surfaced. This alone affected thousands of people dependent on supplementing their lost wages. This also created concern from victims that were still employed, yet had claims open under their names.

Now, as we prepare for tax season, we have seen an increase from victims who are receiving paperwork showing unemployment income they were not aware of. With the pandemic, victims that are already feeling isolated and lonely are more vulnerable to phone calls and social media messages that lead to scams.

Victims that have been targeted by scammers and have lost money are often too ashamed to tell family members, and now have an increased anxiety and fall into despair. Victims do not know where to turn, and the magnitude of these crimes are overwhelming and creating more mental-health-related issues.

COVID set a perfect storm by creating isolation and depression that put people at a higher risk for scams and allowed scammers many different opportunities to prey on this vulnerable audience. As a crime victim advocate, our goal is to provide assistance to our clients and walk them through a step-by-step process of reporting the fraud, gathering evidence to provide their financial institutions, and protect them from further identity theft and fraud-type crimes.

Thank you for your time today.

[The prepared statement of Ms. Ponto follows:]

Congressional Hearing

02/04/2021

Good afternoon esteemed members of Congress, thank you for inviting me here today to talk to you about our organization and what is happening in the world of scams and frauds over this past 2020 season.

First let me introduce myself. My name is Traci Ponto and I am a retired Spokane Police officer after serving for 25 years. I now work full time as a Crime Victim Advocate for Spokane Community Oriented Policing Services. Spokane C.O.P.S. is the non profit organization for the Spokane Police department.

We have 5 staff members, 400 volunteers and 9 COP Shops throughout our city. Our COP shops serve as a liaison between the police department and our communities and provide a location for neighbors to come in and seek assistance with their concerns. Our COP Shops provide programs such as Blockwatch, Identity Theft and Fraud victim callbacks, Neighborhood Observation Patrols, and other programs that work on getting neighbors engaged in their community, working alongside Law Enforcement and taking ownership in keeping their communities safe.

Our organization focuses on crime prevention and working with neighbors to help resolve quality of life issues.

In a time where our nation is asking questions on how to get our law enforcement and community working together our focus is to help educate the community and provide crime prevention tips to help solve many of their concerns.

My current position as a Crime Victim Advocate is to help any and all victims of crime. Law Enforcement is able to go after the criminals, but who takes care of those that are victimized? Many people feel unsafe after being victimized and as an advocate we are able to help restore some of that sense of safety by providing a Crime Prevention Through Environmental Design survey, among other services.

When you are a victim of Identity Theft and Fraud you are incredibly vulnerable to losing your money which is what supports your daily life. Our advocates primary goals are to respond to the emotional, psychological, and physical needs of crime victims. We assist victims in stabilizing their lives after victimization and help them understand and participate in the criminal justice system. Our goal is to restore a measure of security and safety for them.

In 2020 many victims found themselves losing their employment or working from home. With quarantine and social distancing, victims found themselves doing more of their shopping online. Victim Advocates saw an increase in Identity Theft, Fraud and Scams with this vulnerable population.

Phishing scams targeted victims by claiming they were trying to process Amazon returns and needed more personal information. Microsoft scams targeted victims using threats of their subscriptions expiring which would disrupt people trying to work online from home.

Unemployment fraud where databases were hacked, personal information stolen and fraudulent unemployment claims surfaced. This alone affected thousands of people dependent on supplementing their lost wages. This also created concern from victims that were still employed yet had claims opened

under their names. Now as we prepare for tax season we have seen an increase from victims who are receiving paperwork showing unemployment income they were not aware of.

With the pandemic, victims that are already feeling isolated and lonely are more vulnerable to phone calls and social media messages that lead to scams.

Victims that have been targeted by scammers and have lost money, are often too ashamed to tell family members and have increased anxiety and fall into despair. Victims do not know where to turn and the magnitude of the crime is overwhelming creating mental health related issues.

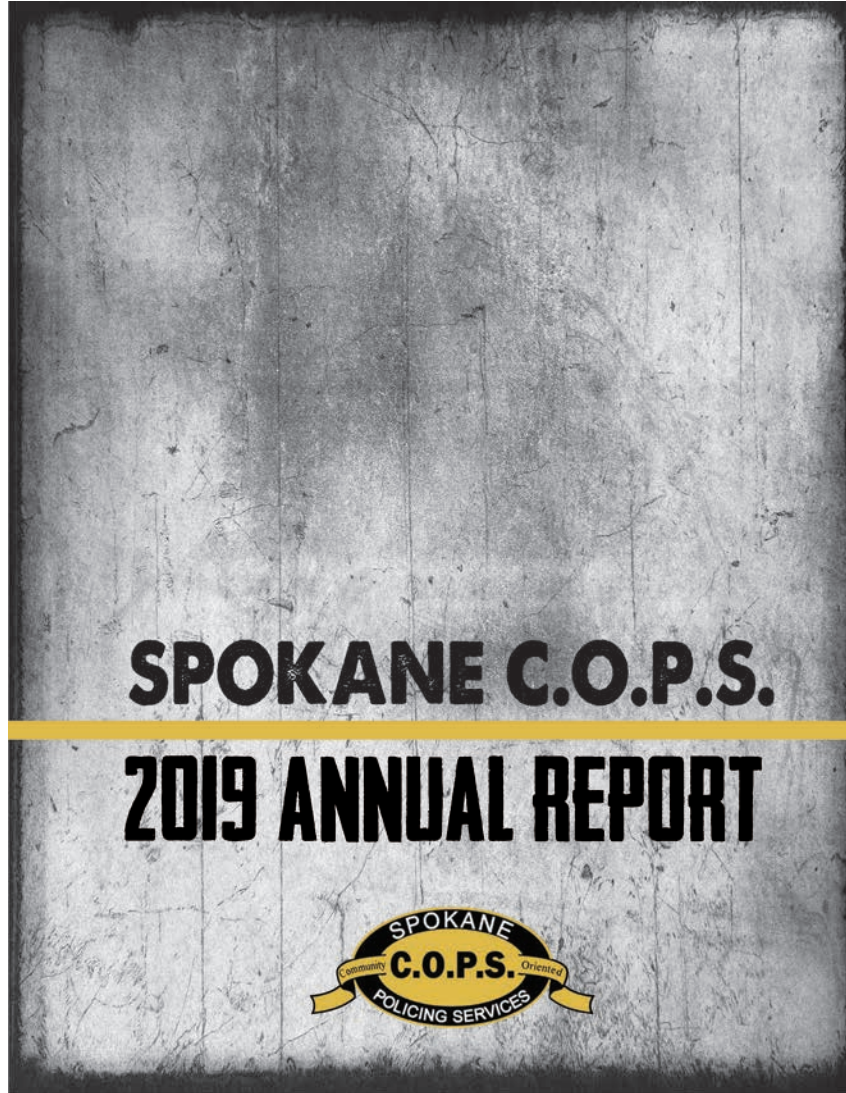
COVID set a perfect storm by creating isolation and depression that put people at a higher risk for scams and allowed scammers many different opportunities to prey on this vulnerable audience.

As a Crime Victim Advocate our goal is to provide assistance to our clients and walk them through a step by step process of reporting the fraud, gathering evidence to provide their financial institution, and protect them from further identity theft and fraud type crimes.

Thank you for your time today

Traci Ponto

Spokane COPS Crime Victim Advocate



## ACKNOWLEDGEMENTS

We at Spokane C.O.P.S. want to take a moment to acknowledge the community around us. As an organization, we exist to make this community better and safer. But that only happens when the community steps up and rises to the challenge. Our volunteers give of their time freely and serve passionately to make us all safer. Our Board members do the same. Our Mayor, City Council members, and other city officials all support us and promote us within the community. We can't be who we are without YOU being who you are.

*Thank you!*



## MISSION STATEMENT

The mission of Spokane Community Oriented Policing Services (C.O.P.S.) is to promote and support a safe community. We provide crime prevention education and public safety programs by neighborhood volunteers in partnership with the City of Spokane, the Spokane Police Department, the Washington State Department of Corrections, and community stakeholders to improve the quality of life in the entire community.



## TABLE OF CONTENTS

Letter from the Chairman.....	6
Letter from the Chief of Police.....	6
Financial Report.....	7
Board of Directors.....	8
Staff.....	9
Neighborhood Resource Officers.....	10
Community Corrections Officers.....	11
<b>Crime Prevention Programs</b>	
Paws on Patrol.....	12
Neighborhood Observation Patrol.....	14
Block Watch.....	16
Mounted Patrol Unit.....	18
Operation Family ID.....	20
Bicycle Registration.....	21
Property Drop-Off.....	22
Latent Fingerprinting.....	24
Crime Free Rental Properties.....	26
Reporting Code Enforcement Violations.....	28
Mobile Radar.....	29
Victim Call Backs.....	30
Crime Victim Advocacy.....	31

<b>C.O.P.S. Shops</b>	
Citywide Statistics.....	32
C.O.P.S. East Central.....	33
C.O.P.S. North Central.....	33
C.O.P.S. Nevaewood.....	34
C.O.P.S. Northeast.....	34
C.O.P.S. Northwest.....	35
C.O.P.S. Southeast.....	35
C.O.P.S. Logan.....	36
C.O.P.S. Southwest.....	37
C.O.P.S. West.....	37
<b>Events</b>	
2019 Events for Mounted Patrol.....	38
Volunteer Appreciation Dinner.....	39
<b>What to watch for in 2020</b>	42
<b>Community Partners</b>	43



## FROM THE CHAIRMAN



2019 was an exciting year for this organization! We saw quite a few positive elements that we have been able to capitalize on. We got Paws on Patrol up and running, and the community response has been overwhelming with support. It's a great way for community members to get involved and help us in our fight against crime. We also look for and how to report issues. It's been great hearing the success stories volunteers have had cleaning up their neighborhoods.

The Mounted Patrol Unit had another banner year and expanded the program to include a new area. We had a lot of success throughout the year but they were requested at more events than I would have ever imagined: not only locally, but other cities and towns throughout eastern Washington requested their presence at events. They even added a drill team this year that drew quite a buzz!

Our shops continued to assist community members by giving them a place to go speak with someone for assistance, our latent fingerprint teams continued to assist victims by helping to catch culprits, our Operation: Family ID teams were requested at a multitude of events to help keep kids safe, and finally, our NOP teams have really grown. I know that Patrick and Sand have been going to the weekly crime prevention meetings to get information to bring back to our NOP teams, and their presence has been incredible.

I'm proud to be the Chairman of the Board for this organization, proud to support our volunteers and the Spokane Police Department, and I look forward to a great 2020!

## FROM THE CHIEF OF POLICE



In 2019, C.O.P.S. continued to develop new programs, expand existing programs and engage at unprecedented levels. In addition to increased Neighborhood Observation Patrol participation, C.O.P.S. staff established themselves as an integral part of SPD's weekly Crime Control meetings. We also continued to expand our presence in the community, with hot spots in neighborhoods and repeat offenders that continue to victimize our city. This partnership allows volunteers from the C.O.P.S. program to fill in gaps that SPD is not able to, including victim call backs, fingerprint lifting, CPED recommendations, and expanded community patrols, just to name a few.

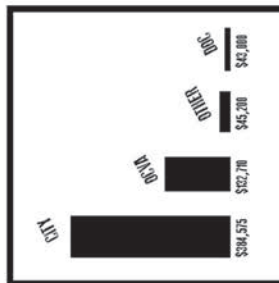
In addition to the NOP patrols with community volunteers, Paws on Patrol was established as a very successful program that is not only exciting and easily accessible for neighbors who want to get involved, it allows for safer neighborhoods while doing something they already do, walk their dogs.

The Mounted Patrol unit continues to be one of the biggest attractions in our parks during the summer, and their presence has a noticeable impact on the feeling of safety from those bringing their families to one of our many parks for an afternoon of fun. I am thankful for the partnership with C.O.P.S. under the leadership of Patrick Stinker, and I look forward to the many amazing things we will do together in 2020.

## FINANCIAL REPORT

Spokane C.O.P.S. is a 501(c)3 organization, incorporated in the state of Washington in 1995. We rely on funding from our partners the Spokane Police Department, Washington Department of Corrections, Office of Crime Victim Advocacy and, of course, we seek donations and sponsorships from throughout the community. We are proud of the partnerships we have cultivated, and the profound difference we are able to make in the community with these funds. Based on the current federal rate for volunteers, our volunteer hours alone (not counting staff hours) provided almost \$800,000 of value to the Spokane community this year. We are amazed at this effort and we commend our volunteers for all their hard work!

### REVENUE



### STATISTICS

IN 2019 OUR VOLUNTEERS CONTRIBUTED 31,424 HOURS OF THEIR TIME AT THE FEDERAL EMPLOYMENT RATE OF \$25.43 PER HOUR. THIS TOTAL EQUATES TO \$800,000 OF VALUE ADDED IN OUR STAFF TIME. WE SURPASS THE \$1.2M MARK.

## 2019 BOARD OF DIRECTORS



Kelly Cruz, Chair  
West Central Association  
of Business



Karen Stratton, Vice Chair  
Spokane City Council



Laura McQueen, Treasurer  
Attorney



Scott Barker  
Spokane Department of  
Corrections



Brenda Peterson  
Compliance Inspector



Larry Volz  
Federal Corrections  
Retired



Lucinda Owens  
Police Ombudsman



Malier Eric Olsen  
Spokane Police Union



Doug McGuire  
IAM Union

## STAFF



Patrick Striker  
Executive Director

Patrick joined Spokane C.O.P.S. in April of 2015. His background is diverse, having been a police officer, a corrections officer, and a business owner. He has moved out to Spokane some years ago to attend Whitworth University, where he received his Bachelors in Theology/Philosophy, and later achieved his Masters of Business Administration from Green Mountain College. He enjoys Spokane C.O.P.S. because of its mission and the people it serves. He thinks it's a great organization and that the staff are doing a great job. He is proud to be a part of the staff and is looking forward to giving to the organization.



Michael St. Victor  
Office Manager



Sandi McIntyre  
Programs Manager



Tamra Brannon  
Crime Victim Advocate



Traci Ponto  
Crime Victim Advocate

Maureen Vulcano, Programs Manager - Retired & Abby Walther, Crime Victim Advocate - Resigned





### NEIGHBORHOOD RESOURCE OFFICERS (NROs)



Kelly Morgan  
C.O.P.S. Southwest



Jacob Willard  
C.O.P.S. Southeast



David Kaurin  
C.O.P.S. Logan



Deanna Storch  
C.O.P.S. Newwood



Traci Ponto  
C.O.P.S. West



Keith Cler  
C.O.P.S. Northwest



Dale Wells  
C.O.P.S. North Central



Jeremy Howe  
C.O.P.S. Northeast



Seth Berrow  
C.O.P.S. East Central

### COMMUNITY CORRECTIONS OFFICERS (CCOs)



Scott Burkart  
CCO Supervisor



Justin Tuttle  
C.O.P.S. Newwood



Sandy Shoppert  
C.O.P.S. Newwood



Pat Hillis  
C.O.P.S. East Central



Marjorie Garza  
C.O.P.S. East Central



Travis Huntsinger  
C.O.P.S. Southwest



Jeff Overholser  
C.O.P.S. Southwest



Chris Schilling  
C.O.P.S. Logan



Matt Keller  
C.O.P.S. Logan



Ryan Austin  
C.O.P.S. West



Lindsay Johnson  
C.O.P.S. West



Jeff Hawkins  
C.O.P.S. Northeast



Al Warren  
C.O.P.S. Northeast



Erik Phillips  
C.O.P.S. North Central



Todd Ite  
C.O.P.S. North Central



## CRIME PREVENTION PROGRAMS



The first step in crime prevention is to realize that to prevent crime or becoming a crime victim, we must accept that crime prevention is a shared responsibility. It is not a citizen problem or a police problem. It is a problem that can only be properly addressed by the entire community. Therefore, safety is truly a shared responsibility.

Three elements must be present for a crime to occur: desire, ability, and opportunity. This is also known as the crime triangle. A person may "want" to commit a crime and have the "ability" to commit a crime, but if we deny them the "opportunity," then no crime can be committed. Historically, the primary goal of crime prevention has been to apprehend criminals. Although this goal is still important, the goal of preventing crime and reducing the cost of crime has taken on significant importance. Spokane C.O.P.S. takes providing crime prevention resources to help make our community safe and secure. Spokane C.O.P.S. goal is to help individuals prevent crime by helping them make decisions in their everyday lives to reduce the opportunity for crime. We provide resources to help individuals secure their homes, vehicles, and businesses, including door and window security, securing doors and windows, being aware of your surroundings for personal safety, and most importantly, building strong relationships with your neighbors and developing a strong sense of community are all important risk reduction strategies.

Spokane C.O.P.S. has a proven, well-developed approach to crime prevention through Block Watch, Neighborhood Observation Patrol (NOP), Crime Free Rental Properties (CFRP), CPTED (property inspection of residences, commercial or multi-family properties), Latent Fingerprinting, Operation Family ID (child ID), Bike Registration, Operation ID (enraving ID), Business Watch, Safe Streets, Property Drop Off and Code Enforcement Reporting, Mounted Patrol and Paws on Patrol. These crime prevention programs may be deployed on their own or in combination to help our citizens in taking a responsible approach to reducing crime in their environment.

## PAWS ON PATROL

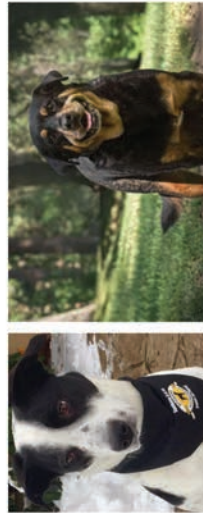


2019 saw the introduction of an amazing program, Paws on Patrol. In essence, the program is designed to take advantage of something many of us do every day: walk our dogs. Typically, when we are out with our dogs, we are also looking for something to do. We are looking for something to talk about, an email, maybe lost in thought, maybe talking on the phone. Whatever it may be, we aren't usually focused on problems in our neighborhoods. But by taking people who want to learn how to report and what to report, we can get them trained up to be great resources for cleaning up their neighborhood.

We put our volunteers through an orientation, covering some of those crime related scenarios and things to be on the lookout for. We also encourage our volunteers to talk to their neighbors. Just as we teach in our Block Watch program, getting to know your neighbors is the best thing you can do for crime prevention. Neighbors who look out for each other are an unstoppable force for good, safe neighborhoods.

Once they are trained up, our volunteers can either do their patrols on their own when they are out, and reporting issues as they come up, or do our group patrols. Each week, we had a patrol that was in problem areas for our communities. We hit parks that were seeing issues, as well as neighborhoods that were reporting higher levels of crime. Our volunteers talked to neighbors to get information from them, observed and reported issues, and provided a visual presence in those areas.

Sometimes just having our volunteers in force, out in uniforms, makes a huge difference. It was amazing to see how many people approached our volunteers to see who they were because they were attracted by the dogs, and the positive response they had when our volunteers explained who they were. We also did a number of fun events, walking in several parades as well as National Night Out events, and we saw a number of success stories for the impact we had on neighborhoods and parks, and we are ready to accomplish even more in 2020!



## NEIGHBORHOOD OBSERVATION PATROL

The Neighborhood Observation Patrol (NOP) was part of the COPS Program since the early years of this nonprofit organization. In order for a citizen to become a part of this program they need to fill out an application and pass their background check. SPD officers involved in training our NOP volunteers on how to do their job would look to them as role models. The NOP has been successful in helping citizens understand police procedures, how to patrol hot spots (high crime areas) and how to report back info. Our NOP program has been involved this year with SPD at their Crime Control Meetings that occur weekly. NOP Volunteers are given hot spot areas to patrol and show a presence around the city. They have been able to help reduce crime by being visible and there have been two SPD and the citizens really appreciate their extra "eyes and ears" and are now seeing more SPD and NOP vehicles and NOP volunteers all over the city. We have been able to flow sending our NOP vehicles and NOP volunteers all over the city. We have been able to get NOP teams working out of other parts of the city. The NOP request has been abundant lately so we had to add more teams to the City. This has helped us keep our citizens safe and secure and it adds security because they know SPD does not have enough officers to assign to just one event. There are a number of social media sites currently where neighbors in all neighborhoods exchange information about drug houses, stolen property, thefts that have occurred or suspicious activity. These sites have helped us find out what is going on in the community and help protect themselves and their neighbors and add those extra sets of eyes. Our NOP volunteers are able to capitalize off of these social media sites. Community members send info to the volunteers or shops through these websites and ask for extra patrols. The NOP volunteers can identify crimes and respond quickly to public requests. The NOP also helps people who are afraid to go outside their homes at night. The NOP can assist with whatever they can. Our NOP volunteers help educate our citizens on how to stay safe. They can tell you how to lock your doors and garages, etc. NOP volunteers also worked on keeping cops on leashes, lock their doors and garages, etc. NOP volunteers also worked on making sure that the Code Violations complaints were sent to the Code Enforcement Unit. They also helped those citizens by going back and making sure the violations were corrected. The NOP volunteers were extremely helpful this summer in helping the NIO's pin point where the problem areas were. They went around the city and took pictures of the problem areas. NOP volunteers are so dedicated and hard put. Over 9600 hours this year. Several more teams out of all the groups.



## PROGRAM SPOTLIGHT

I have been a volunteer with the C.O.P.S. organization for over 2 years and the greatest joy I have is being involved in the Neighborhood Observation Patrol. I love my community and being able to walk the streets and say hi to my neighbors while keeping an eye on safety issues is awesome.

I was a teacher for over 30 years, and keeping our children safe to and from school is paramount. That is why NOPING the school routes and looking for code violations, unsafe sidewalks, graffiti, questionable activity and other concerns is of the utmost importance to me. I feel like even though I am retired, I am still doing my part for the kids in my community.

While out on my patrols, I have found drug paraphernalia, broken bottles, stumbled upon transient camps, abandoned vehicles, excessive debris and the list goes on.

It is a great way to know your neighbors, your neighborhood and make your world a little better. I am blessed to be able to give of my time in this way!

## STATISTICS

OUR VOLUNTEER NEIGHBORHOOD  
OBSERVATION PATROL PROVIDED  
OVER 9663 HOURS OF SERVICE  
TO THE SPOKANE COMMUNITY.





**BUILDING A STRONG SPOKANE STARTS WITH EACH OF US BUILDING STRONG RELATIONSHIPS WITH OUR NEIGHBORS RIGHT NEXT DOOR.**

**STATISTICS**

OVER 600 BLOCKWATCHES ACROSS SPOKANE

## BLOCK WATCH

Block Watch is the backbone of what we do at COPS. The idea behind Block Watch is really twofold. First, we want to train you up on identifying problems and what to do about them. That house that looks like it's been broken into? That car that's been left in the street for days? How do you report that? What information should you be getting? And who do you give it to? Or, if your neighborhood is getting hit with car prowls, how do you fight back against that? Are there tricks to keeping your car safer? Can you get more police presence? Are there things you can do to make your neighborhood safer? Whatever the issue is that you and your neighbors are concerned about, we can help. We will meet with you and your neighbors and find out what your concerns are. We'll listen to YOU. Then, we'll help you start dealing with those problems. We'll get you in contact with the right city official, the right police officer, whoever it might be. We'll help you come up with a solid plan to deal with those issues. We can get you and your neighbors working together and educated so you can make your neighborhood safe again. We can help you accomplish a sense of community. Often, it is the fear of crime that is worse than the crime itself. It's that sense of not being able to sleep well at night because of concerns for safety, of constantly feeling like you have to guard your property, all of those things that make you feel like you're not in control of your own neighborhood. You start to learn how to combat the issues you are seeing, and you start to develop good relationships with your neighbors, you will find that your fear begins to go away. When you have a handle on those issues, when you know your neighbors are looking out for you and you know your neighbors, you'll begin to enjoy your neighborhood again. Just like you should.

2019 saw us push to grow the Block Watch program even more. Since Block Watch can fix so many problems and build that strong sense of community in a neighborhood, we pushed to have our shops reach out to our neighbors and make sure they were open to our communication open. What are you seeing in your neighborhood these days? Anything of concern you want us to know? Any programs you would like to learn more about? We wanted people to feel like they had a connection with their neighborhood shop and could let us know what was going on. Our neighbors and our volunteers attended dozens of meetings with Block Watches this year to dig in deeper to address issues that were serious enough that a phone conversation wouldn't suffice. Further, over the year we kept working to modernize Block Watch to make it more accessible to our neighbors. We wanted to make sure that our neighbors, we have kept striving to make use of technology, be sensitive to peoples' busy schedules, and figure out how to get people to see how incredibly relevant this program is.

## PROGRAM SPOTLIGHT

My name is Makaya Judge, and I am a resident in South Perry. My neighborhood was experiencing some concerning behavior such as heavy traffic late at night, junk vehicles, and people loitering in the area. I decided to start a neighborhood Block Watch group in order to get together with my neighbors and make a plan.

SPOKANE COPS was instrumental in walking us through how to do this, and volunteers helped us get started. We began a weekly walking group who patrolled the neighborhood while walking our pets. During these walks, we introduced ourselves to neighbors out in their yards or on their porches and created more interest and a larger email list of neighbors. We noticed dark areas where bad actors might hide and encouraged them to turn on their porch lights. We also noticed people who were loitering and asked people if they needed directions. More and more, we made our neighborhood an uncomfortable place for people to feel they could prowls cars or do drug deals. It was obvious we were watching, but also that we were friendly. It really brought everyone together. Even the "problem house" was approached with kindness and we have had coffee with the owner and discussed how to address the transient issues.

We all call code enforcement on the same day when there is a big problem (like people living in vehicles, or broken trailers blocking the right-of-way), and it helps to get the issue taken care of right away. Working together, we have fostered better community and a sense of pride in our neighborhood. We have also been able to get our neighbors to be out of town, or when a relative will be visiting so that we aren't surprised by a new vehicle parked there for a while.

Because of the wonderful support my neighborhood received from COPS volunteers, I decided that I wanted to get more involved in the program. I started out by volunteering at the desk in the South East Shop, and soon ventured into the NOP program, Latent Fingerprinting, and O.F.I.D. I realized the impact I could have not only on my neighborhood community, but on the whole city through these programs. What I am now working on is to get more people involved in the program. I have been able to get more people to have to do events, attend meetings to encourage new volunteers, and educate families about O.F.I.D. I look forward to having more free time in the future and getting back into my weekly shift at the desk! Volunteering for COPS is easy for anyone to do, since there are so many different ways to help no matter what your schedule or ability level. It has been a great experience and I look forward to many more years of service to this valuable community program.

## MOUNTED PATROL UNIT



The COPS Mounted Patrol Unit started their 2019 season with 35 horse and riders and 5 ground support. After this season's training we participated in the Lilac Armed Forces Parade for the first time in 50 years. Partnering with the Spokane Fallen Officer Memorial, we provided the officer and riderless horse as well as the mounted patrol unit to the parade. We were able to provide a great service to the community for equine in Community Service award and 3rd place overall for best lighting! June 1st we hit 13 city parks, handling out trading cards and talking with the community on why it was important to be visiting their parks, as well as promoting crime prevention.

New to our team this year is our COPS Mounted Patrol Drill Team. We were able to get 10 neighborhood officers to join our team and we were able to provide a great service to the community. The drill team used these flags in their practices and then sported the flag in parades and at special events. We provided entertainment to the Lind Combine Derby where we quickly became a favorite to the town, offering up a volunteer who sang the National Anthem, provided a Color Guard to lead their parade and then participated in the parade. Our team was able to participate in the Springdale rodeo, Cobville Rodeo, Davenport Rodeo and Ritzville's 50th anniversary rodeo.

Our Mounted Patrol participated in the Cheney parade where we took 1st place in the mounted entry, Ritzville we took 2nd place for Community, Hillyard parade we had 1st place for animal entry and 3rd place for mounted patrol. We were able to provide a great service to the community. We participated in a national night out events with Bemiss, Shadle, Chief Garry, Logan, Minnehaha, Cliff-Cannon, Thornton-Murphy, and Glass Park.

We brought our horse and riders to West Central Neighborhood Festival, Comstock/Manito Summer Periways, Spokane Parks Foundation with their 'Make A Splash' events at Hillyard, Liberty and Cannon Park, Riverpark Square Junior Police Academy. This year we added partnerships with Spokane Police Guild and Riverpark Square Rodeo, working with children with special needs, Shriners Children Hospital, and Hospice of Spokane.

We wrapped our season with a first time ever 'Moonlight Over Manito' Scavenger Glo Hunt with 12 horses in the hunt. We were able to provide a great service to the community. We also put on our second annual 'Sleigh Bells in Corbin park' event with Santa and Mrs. Claus. This was another free family event where we hosted 2 draft horse teams providing wagon rides around the park along with refreshments for 400 families. Overall this second successful season to our COPS Mounted Patrol Unit netted 4759 volunteer hours, 300 city park visits and 30 special events!



"The Spokane Parks Foundation is pleased to partner with the C.O.P.S. Mounted Patrol Unit through our community grants and Make a Splash in a Kid's Life programs. There is something magical that happens to people of all ages when they engage with the horses and riders. They are transformed and inspired by the animals' size, beauty and calm demeanor. Spokane Parks Foundation is grateful for the C.O.P.S. Mounted Patrol unit's commitment to providing a great service to the community. We appreciate the opportunity to provide funding for training." Spokane Parks Foundation



"The Spokane Police Guild fully supports the great work Spokane C.O.P.S. Mounted Patrol does throughout the Spokane community. The volunteers of the Mounted Patrol not only provide a great service to the community but they also provide a great service to the community of security to those enjoying our beautiful community. They are also an invaluable part of the community outreach efforts of both SPD and the C.O.P.S. program. Their nearly 5,000 volunteer hours for 2019 is an amazing asset that we will continue to support so Spokane C.O.P.S. Mounted Patrol can carry on their important work into 2020 and beyond." Spokane Police Guild

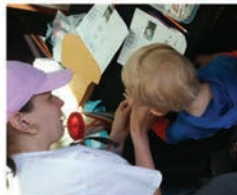
**STATISTICS**  
MOUNTED PATROL HAD 4759  
VOLUNTEER HOURS IN 2019

## OPERATION FAMILY ID



Operation: Family ID is certainly one of our most requested programs by the community. OFID is designed to help keep children safe: we come to an event or to a school, and we take photos of the children, get their fingerprints, and we take their information is put onto a card, which is then given to their parents. For privacy reasons, we don't hang on to any of it. If the child were ever to go missing, the parents have the critical information they need to find their child. In addition to providing this service for children, we also do it for anyone who might need this service: senior citizens with dementia at a nursing home and adults with developmental disabilities at a facility. Almost any public event across this area can be a Family ID event.

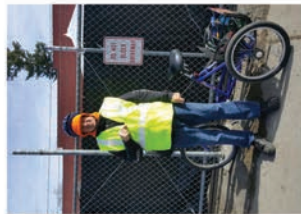
2019 saw a change in the equipment we use to provide this service. In the past, we used a laptop, a camera, and a printer. Thus, we had the equipment loaded onto a cart to take to the event, and we always needed to be near a power source. This was a problem for many events, and the heaviness of the equipment could get frustrating at events where they had to drag it in a long distance, and if there was no outlet nearby, we were limited for what we could do. To that end, we researched equipment and needed something that was portable, had the printer and the tablets can be charged up before the event, so having an outlet nearby is no longer an issue. And all of the equipment can now fit in roughly a shoebox sized container and weighs only a few pounds, making it easier for those who are not as strong as we used to be. These changes led to a growth in volunteers who wanted to do this program, which greatly expanded our ability to attend the events we were requested for. In fact, we started doing so many events, instead of two sets of equipment as in the past, we now need three sets of equipment at the shops with their own set because they were using it so much. And that's a great problem to have!



## BICYCLE REGISTRATION

Bicycle thefts are high in Spokane. The good news is the police department is adept at catching the thieves, but returning the bikes to their owners can be a bit of a hassle. If you have a bike that's been stolen and subsequently recovered, you'll get it back quickly and easily. It's always sad to see how many bikes go to auction because the owners couldn't be found. But that's where your neighborhood COPS shop can help. Bring your bike into the shop and let us register it for you. In the past, we had a lot of bikes that were stolen and then recovered, but one that could make all the difference in getting your bike back.

2019 saw us registering bikes at many events, big and small. We were at the Spokane Bike Swap, which is a great event for us and one that we typically register about 300 bikes each year. Likewise, Spokefest is a great event for us, and we registered about 100 bikes there. We also participated in many other events and registered bikes at each. Not only did we register bicycles, but we received a grant for bike helmets and when bikes were registered with us, if the owner didn't have a helmet, we were able to give them one for free as a way to further promote bike safety. In addition, we received a generous donation from the Spokane Police Department's Bike Patrol. The Bike Patrol is a group of Patrols and Pawe on Patrol folks had those with them, and were able to give them to kids who were wearing helmets while on their bikes. So not only did we register bikes, but we were able to promote bike safety as well.





## PROPERTY DROP OFF

This program is used daily here in Spokane. If you find an item you think is lost or stolen and are not sure what to do with it, bring it to your local C.O.P.S. shop. The volunteers will take it and get all the information they can to try and find the owner. It is a horrible feeling when you lose something, particularly if it is your wallet, your purse, your credit card, drivers license, etc. Your brain races around with hundreds of questions... who do I tell? Who do I call? Who can you turn to in the city and ask if someone has turned in that special item? Well, here at C.O.P.S. we have a place for you to turn to. We have a place where you can drop off your wallets, purses, bank cards etc. They have been highly trained in using their research knowledge and have returned so many people their lost property. They are also credited in researching and investigating items brought into the shops to see if the items are stolen or linked to any crimes. This is a great feeling for the volunteers. It is also an awesome feeling when police officers thank the volunteers for helping them out with their job and saving them time.



## PROGRAM SPOTLIGHT

A man walked into C.O.P.S. Northeast and said he had found a wallet in the street in front of his house. The volunteers looked in the zipper woman's wallet and located a Tennessee drivers license, Social Security Card (same name) and a list of random phone numbers. The volunteers worked on calling the phone numbers and came across a friend of the lady who lost her wallet the day before here in Spokane, WA. The friend knew where the lady had been staying. She drove to the house and found her friend, told her the wallet had been found and took her to C.O.P.S. Northeast. This woman was crying and so thankful for that kind man who came into C.O.P.S. Northeast to turn her wallet in. She was due to fly home the next day and knew she would not be able to without proof of who she was. Thank you to our hard working and researching volunteers at C.O.P.S. Northeast. You put a smile back on her face!

## STATISTICS

IN 2019 OUR C.O.P.S. SHOPS  
COLLECTED 426 ITEMS  
BROUGHT INTO US BY LOCAL  
CITIZENS. MANY OF WHICH  
WERE RETURNED TO THEIR  
OWNER THROUGH THE DILIGENT  
WORK OF OUR VOLUNTEERS.



## LATENT FINGERPRINTING

When cars are provided, officers don't always have the time needed to try and lift prints off of the vehicle. Our volunteers are able to help with that issue by lifting those prints for them. The forensics team trains our volunteers on how to properly lift prints and do the required paperwork. They also teach them how to use the forensic kit and how to properly lift prints. Rather than letting community members feel forgotten because officers didn't have the time to look for prints, community members are able to see that this community does care, and we are all doing what we can to bring justice to the perpetrator. There are few things more exciting than seeing the results of our volunteers do a lift that resulted in the arrest of the criminal!

This year saw the expansion of this program to new locations. In the past, our lifts were done at one location. But in an effort to make things easier for our volunteers, we moved the program to a new location that was more accessible. We had a growth of volunteers for this program, which enabled us to be more responsive to the community and get the lifts in a timelier fashion with greater ease for the community. Towards the end of 2019, we met with SCOPE and the forensics team and went over the process of how to properly lift prints and how to use the forensic kit. This revitalized the program and made things easier on our volunteers to spend more time doing lifts and less time on the office portion related to the lifts. We also worked out the ability to allow for interchangeability between city and county victims, which further made things easier for our volunteers. This year, we had a great year for this program and more volunteers. Overall, 2019 was a great year for this program!



## PROGRAM SPOTLIGHT

When I woke up one morning to my car being broken into - I felt so violated and beyond overwhelmed. I didn't even know where to begin to make sense of the mess these criminals had made of my vehicle.

I called crime check and they let me know that I could call my local C.O.P.S. shop and bring my car in to have it fingerprinted. The process was a lot easier than I could have even imagined - they were accommodating to my schedule and beyond understanding and compassionate to the frustration I was feeling over this situation.

The professionalism and knowledge they showed in their field was impressive! I felt like I was on the scene of CSI - they even explained to me how the magnetic powders worked and let me watch and be a part of the whole process.

At the conclusion they gave me great information on ways to protect my identity and resources for victims of theft and made me feel not so alone in my moment of need.

Thank you Spokane C.O.P.S. - you are a great addition to this community!

- Susan from the South Hill

## STATISTICS

IN 2019 C.O.P.S. WORKED  
WITH 1170 VICTIMS OF CAR  
THEFT AND LIFT A  
FINGERPRINT LIFT





## CRIME FREE RENTAL PROPERTIES

This program is a very educational program for single family and multi-family property owners and managers. The exchange of techniques and information has made so many properties here in Spokane safer, cleaner and friendlier. These properties are able to get re-certified as Crime Free Rental Properties (CFRP) through the Crime Prevention Through Environmental Design (CPTED) program. This is a recognition for insurance companies and potential future renters to know this property is compliant and safe with the C.O.P.S. Program. Anyone with any rental property can come to our trainings and learn how to pick good tenants who are responsible and law-abiding. We have a 2 day training that covers experts who teach in areas of their own expertise. Some of the classes are cover how to properly screen tenants, drugs and warning signs, gang warning signs and removal from property, fair housing issues, sign to look for, how to deal with bad tenants, how to deal with bad tenants with those renters who are victims, crisis resolution and evictions, Crime Victim Advocacy involving fraud and ID theft, fire safety issues and making an emergency plan for renters/guests, and how to work with the police and your Neighborhood Resource Officer to provide a fantastic place to live.

2019 saw over 20 new locations added to our certification. We performed the annual inspection on over 80 locations to ensure compliance with crime prevention principles. We also worked to help our tenants and managers understand the program and who had effectively dealt with similar issues. By working to create a mentorship program, we were able to get rental units cleaned up and made safer for families more effectively by tapping into each other's strengths and relying less on city resources.



## PROGRAM SPOTLIGHT

I attended the Crime Free Rental Property Seminar conducted by Spokane C.O.P.S. and even though I have been in the property management industry for decades, I came away with a wealth of information and new knowledge on ways to make my properties safer for my tenants and my staff.

The guest speakers that were invited to participate were top knoth and experts in their field of real estate law, public safety, drug recognition, fire safety, frauds and scams, gang activity recognition.

I especially am looking forward to having a CPTED (Crime Prevention Through Environmental Design) Site Survey conducted at my properties.

Thank you Sandi & team - you do good work!

Ronald G. Spokane Multi-Unit Property Owner

**STATISTICS**  
CURRENTLY THERE ARE **98**  
PROPERTIES ENROLLED IN OUR  
CRIME FREE RENTAL PROPERTY  
PROGRAM IN SPOKANE

## CODE ENFORCEMENT REPORTING



Reporting Code Violations are one of the most important things our volunteers can do to help fight back against crime. When you think of crime, you might not see the connection between things like graffiti, cars on blocks, trash in lawns, and then true criminal things like drug deals. But the reality is those code violations and actual criminal behavior are far more intertwined than you might think. The broken windows theory states that if you don't take care of the small things, they just do. When a criminal is looking for a place to commit their crime, they are inherently drawn to places that show no pride of ownership. It sends a message of "you can do whatever you want here, no one cares." While that's not to say that well-maintained neighborhoods are then immune to crime, the data certainly bears out that those that are not maintained experience far more crime than those that are well-maintained. So getting your neighborhood cleaned up and looking nice acts as a natural crime deterrent.

2019, we continued to work closely with Code Enforcement and report violations. We were grateful to have several Code Enforcement personnel come out to our NOP meetings to allow the volunteers to ask questions about code issues and get clarification. A number of our volunteers even went on ride-alongs with Code Enforcement officers, which further helped their understanding of violations. Working hand-in-hand with Code Enforcement is another tool to help fight back against crime in Spokane.



**STATISTICS**

IN 2019 OUR C.O.P.S. SHOPS  
REPORTED 1256 VIOLATIONS TO  
CODE ENFORCEMENT



## MOBILE RADAR

Keeping our neighborhoods safe includes ensuring that speed is controlled. Our mobile radar is available to be placed in neighborhoods experiencing issues with chronic speeding issues. Just the presence of our mobile radar unit causes dramatic slow downs in residential areas.

2019 saw the requests for the unit increase exponentially. Almost daily, C.O.P.S. 307 received communication from concerned community members asking for the unit to be placed in several times a week to keep up and keep the community safe.



## VICTIM CALL-BACKS

For property crime victims, it can be a frustrating situation. You've just been victimized, perhaps your car was prowled. Your belongings were stolen, your car window smashed. And now what? What are the steps you need to take to get your car fixed? What are the steps to take from happening again? That's where our volunteers come in. We are able to call back those victims so that people feel like someone cares. Particularly those who were unable to get an officer response, it is helpful to have our volunteers call so that they don't slip through the cracks. We reached out to over 5300 victims, taking the time to talk to each person, let them tell their story, and give them any information we could.



### STATISTICS

IN 2018 OUR C.O.P.S. SHOPS  
PLACED 5,309 CALLS  
TO VICTIMS

“

BEING NEW TO THIS CITY  
AND HAVING MY CAR  
BROKEN INTO - I WAS  
FRANTIC AS TO WHERE  
TO EVEN BEGIN WITH  
THE PROCESS TO DEAL  
WITH EVERYTHING. I WAS  
BEYOND APPRECIATIVE  
FOR THE C.O.P.S.  
VOLUNTEER THAT TOOK  
THE TIME TO EXPLAIN  
THE NEXT STEPS OF THE  
PROCESS TO ME. IT MADE  
ME FEEL NOT SO ALONE.

”

SONIA R. VORICE PROWL VICTIM

## CRIME VICTIM ADVOCACY

Our Nationally Certified Crime Victim Advocates, Tamra Brannon & Trad Ponto are available to the public to help navigate the uncertainty that comes with being a victim. They handle situations ranging from protection orders to identity theft to nuisance neighbors.

Their knowledge and training allows them to act as a liaison between law enforcement, the legal system and other aid organizations to find relief and solutions for whatever situation may arise for their victims.

You can often find them at the courthouse being of support to domestic violence victims that are going through the horrific experience of getting a protection order, or standing in front of a room full of people giving a seminar on ways to protect yourself from becoming a victim.

They are extremely passionate about what they do and fight fiercely for their victims.

### STATISTICS

OUR ADVOCATES HAD 7450  
INDIVIDUAL CONTACTS AT 53  
OUTREACH EVENTS SHARING INFO  
ABOUT VICTIM SERVICES.

OUR ADVOCATES HAD 614  
1:1 CONTACTS WITH PEOPLE  
AFTER VICTIMIZATION  
TO WORK THROUGH  
AND OFFER RESOURCES

“

I HAD BEEN LIVING IN A  
NIGHTMARE WITH DRUG  
ACTIVITY AND VIOLENCE  
IN MY NEIGHBORHOOD.  
TWO DOORS DOWN FROM  
MINE, I WAS SCARED TO  
EVEN LEAVE MY HOUSE.  
THE VICTIM ADVOCATE  
AT C.O.P.S. WEST TOOK  
THE TIME TO TALK TO ME  
THIS HAD AFFECTED MY  
LIFE, READ THROUGH  
ALL MY DOCUMENTATION,  
SHE THEN SAT DOWN  
AND PUT TOGETHER A  
PLAN WITH THE NEIGH-  
BORHOOD RESOURCING  
OFFICER TO REMEDY  
THIS NOTORIOUS DRUG  
HOUSE AND ADDRESS THE  
LANDLORD WHO HAD  
ALLOWED THIS ACTIVITY  
TO CONTINUE FOR SO  
LONG. I WAS FINALLY  
GIVEN A VOICE!! MYSELF  
AND MY NEIGHBORS  
FEEL SOME PEACE AGAIN.  
THANK YOU SO MUCH FOR  
GOING ABOVE AND  
BEYOND.

”

WENDY, WEST CENTRAL NEIGHBOR





## THE C.O.P.S. SHOPS

From Neighborhood Observation Patrol to Latent Fingerprinting to Block Watch, it all comes together and is coordinated from our 40 shops and 1 mobile unit. The C.O.P.S. shops are a vital part of our operation where all the actions here our volunteers provide are with C.O.P.S. staff to ensure that we are providing the best possible service implemented across the various neighborhoods of Spokane. These shops are in the neighborhoods and work with real citizens across Spokane. They are also community centers where meetings or other events can be held and serve as a stopping place for Spokane Police and Washington State Department of Corrections to write reports and do other work. The shops are great repositories for information, so stop by and meet your local volunteers.

### Citywide Statistics

TOTAL COMBINED INCIDENTS FROM ALL SHOPS 2018		
Accident Report Forms Given Out.....	186	
Animal Problems.....	60	
Bicycles Registered.....	402	
Block Watch (New Block Watches).....	44	
Block Watch (New Block Watches).....	44	
CRV Services Referral.....	421	
Code Enforcement.....	1134	
Crimes Against Person.....	558	
Crimes Against Property.....	558	
Drug (House/Inquiries/Activities).....	296	
Education Outreach.....	2,637	
Gang (Inquiries/Activities).....	273	
General Inquiries/Complaints/Reports.....	2178	
Identity Theft/Fraud.....	250	
Latent Fingerprint Requests.....	1,167	
Law Enforcement Referrals.....	2,202	
NRO (Calls/Inquiries/Referrals).....	990	
Property Found.....	455	
Registered Sex Offenders (Inquiries/General).....	26	
Runaways Reported.....	13	
Social Service Referrals.....	131	
Vehicle Abandoned.....	249	
Vehicle Prowl/Victim Call Back Reports.....	5,698	
Vehicle Prowl Reported Directly to Shop.....	98	
<b>31,424</b>	<b>56,282</b>	<b>21,125</b>
TOTAL VOLUNTEER HOURS	COMMUNITY MEMBERS INCIDENTS & OUTREACH	TOTAL INCIDENTS

## C.O.P.S. EAST CENTRAL

ANNUAL REPORT | 33



C.O.P.S. East Central continues to serve the lower South Hill area. We work very closely with SPD as our shop is the hub of police precinct activity. The NRO, detectives and various officers assigned here make up our little family and we stay taking care of business. Our DOC officers come in and out here and we assist them with all the clients they supervise.

Our volunteers always keep an eye on expanding the crime prevention programs out of this shop. We monitor and coordinate our Block Watch and Paws on Patrol and the information we get from our Block Watches fuels our NOP crew.

We go out weekly on our NOP patrols and we work very closely with our NRO. Sometimes we get use of the C.O.P.S. vehicle to go NOPing. Otherwise we use our own vehicles.

It is very exciting that the Mounted Patrol and Paws on Patrol are so successful in extending NOP outside the shops. We have a few Paws on Patrol volunteers working at our shop so they keep us informed of their activities. We plan to train our volunteers to do latent fingerprinting so we can offer that service at our shop.

The DOC officers have been busy all year. They each have 50 clients that come in at least once a month. This makes 100 visits and some of their clients come in twice a month and some weekly which keeps them very busy and us too.

## C.O.P.S. NORTH CENTRAL



C.O.P.S. North Central is slowly increasing the number of volunteers who work here and the activities they engage in. Over the past year, we have been working on increasing the number of volunteers as we responded to requests for the entire north side of Spokane.

Currently, six shops now offer fingerprinting to victims of car prowling. We welcome the help as this is very time-consuming work. In fact, the latest Forensics newsletter credits one of our volunteers (Ed) with the help of a volunteer who was able to find the vehicle and catch the vehicle prowler. I love it when we get word that one of our crew caught a bad guy!

Our volunteers are learning how to enter incidents into our computer system and are becoming more efficient in sending out communications to both volunteers using it. Using this program saves so much time and is far more efficient in sending out communications and reports to SPD and the city. The more we use the program, the sooner we can go paperless in the statistics we gather as an organization.

Our volunteers were all over the place and we even helped shut down 2 nuisance/drug houses. One was at 715 W. Knox, where it took the volunteers, the entire block, the NRO (Dale Wells), and the City Attorney to get this accomplished. It was finally done after several attempts to help the owner. The owner kept saying that he wasn't responsible for his tenants or the foot traffic in the alley. He was proven incorrect. North Central was instrumental in the raiding of the house at 602 W. Mansfield (which this time, SWAT was involved). The house is already empty and the tenants are gone. Our Shop is able to help this community get bad areas cleaned up, and we are excited to do more in 2020!

34 | ANNUAL REPORT

C.O.P.S. NEVAWOOD

C.O.P.S. Neawood has the unique challenge of overcoming a culture of reluctance to change and the use of computers. The use of these tools enables our volunteers to be more effective in serving the community. Fortunately, many new volunteers have stepped up to the plate and helped make change happen. One by one, our volunteers are beginning to trust their newly developed computer skills and use of the "System" program which is the engine driving Spokane C.O.P.S.

There is also a growing excitement and enthusiasm over the work being done by Paws on Patrol volunteers. Not only does Paws on Patrol bring new volunteers to our shop but it shows how the focus of the organization has moved away from the old mentality that volunteers need only work the front desk. Now we are seeing a new focus on the "System" program and the shop are the driving force behind what keeps Spokane C.O.P.S. relevant to the city, SPD and public safety. The longevity of our organization depends on this adaptation to change in mentality and the volunteers of C.O.P.S. Neawood are shining examples of blending the talents and skills of many to affect growth and change among the reluctant.

We look forward in 2020 to many new volunteers and the possibilities their talents and life skills will create. We plan to organize our Block Watches and develop our Neighborhood Observation Patrols. We have volunteers interested in latent fingerprinting who plan on pursuing the necessary training to offer this service to the community. Meals on Wheels continues to operate out of our shop and DOC has seen an increase in the number of officers stationed here. Our NRO, Deanna Storch, has settled in nicely over this past year and although busy with the homeless camps, has still managed to take care of the complaints and problems we forward to her.



C.O.P.S. NORTHWEST

ANNUAL REPORT | 35


During the past year, C.O.P.S. Northwest has provided 5,520 volunteer hours of service to the community with all of our active volunteers. We are very proud of this! We have the largest membership of all the C.O.P.S. shops and we stay very busy working all the programs.

Highlights during the year include getting Neighborhood Observation Patrols going again with Victor Frazier & Demetrius O'Neal being the primary drivers for the shop vehicle. Demetrius also is involved with Paws on Patrol with his dog and is the shop liaison on that program should questions or concerns on that program come in the door.

Six volunteers have completed the forensics finger print training and are available in the coming year should any vehicle prowler victims want to bring their vehicle by the shop for a print lift. Our shop brings the total of fingerprinting shops performing this service to six.

In August we sponsored a very successful National Night Out Against Crime party in Shadle Park. It was by far the largest party in the city!

The all-volunteer appreciation dinner was well attended by about a dozen volunteers from C.O.P.S. Northwest, and Victor Frazier, the shop's primary driver, was the guest of honor. The dinner was a success and a great way to thank our volunteers for their service. The dinner was held at the Audubon-Downriver Neighborhood Councils in Issuing Clean up passes that are used by neighbors to haul garbage, debris, and junk to the waste to energy plant for load fees covered up to \$25 per pass. The issuance done two times in the spring and two times in the fall is another community service provided by the council and shop volunteers that helps keep our neighborhoods clean and free of code violations for junk in yards and alleys.




C.O.P.S. SOUTHEAST

C.O.P.S. Southeast has been going strong for 25 years! We trace our roots back to the early 1990s, who for many years spent much of their time at the shop, working for the community. Things have sure changed since then! A different location for one. This winter, we replaced our carpets and did some painting to improve the interior of the shop. We do get a lot of officers taking breaks and doing paperwork.

We are very passionate about our Neighborhood Observation Patrol, which has a long history at our shop. We remember back in the day when we helped turn in 10,000 NOP hours and we were very proud of it. This year, we were able to turn in 10,000 NOP. He tells us where to go, what to watch out for and what he needs. It is information led policing at its best.

Our shop has pioneered the computer programs used to track our activities, report incidents and communicate with other agencies. Southeast has all of its volunteers using the computer, making it the first truly paperless shop. And now we are using our experience to help refine and implement the new "System" program which virtually runs Spokane C.O.P.S.

The latest fingerprinting program has expanded this last year with more shops now offering the service. This has relieved us of the responsibility of covering the entire south side of Spokane. Now we have help and the citizens have more of a choice on where to take their vehicle.



C.O.P.S. NORTHEAST

C.O.P.S. Northeast is open Monday thru Friday at the North side of Spokane. The shop is located in the North half of Spokane. There are two detectives, a lieutenant, a sergeant and an NRO, helping the captain. DOC has two officers stationed here and they supervise the detectives. The shop is open from 9:00 am to 5:00 pm. The shop is located just inside the front door, greeting citizens who come in or call in need of assistance. Our volunteers are highly trained to confidently handle calls for service or complaints. The volunteers also engage in the "System" program and the shop are the driving force behind what keeps Spokane C.O.P.S. relevant to the city, SPD and public safety. The longevity of our organization depends on this adaptation to change in mentality and the volunteers of C.O.P.S. Neawood are shining examples of blending the talents and skills of many to affect growth and change among the reluctant.

We look forward in 2020 to many new volunteers and the possibilities their talents and life skills will create. We plan to organize our Block Watches and develop our Neighborhood Observation Patrols. We have volunteers interested in latent fingerprinting who plan on pursuing the necessary training to offer this service to the community. Meals on Wheels continues to operate out of our shop and DOC has seen an increase in the number of officers stationed here. Our NRO, Deanna Storch, has settled in nicely over this past year and although busy with the homeless camps, has still managed to take care of the complaints and problems we forward to her.



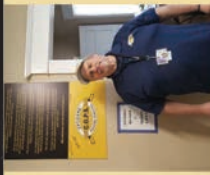
on Patrol is adding a new dimension to NOP and we welcome these enthusiastic new volunteers. The Mounted Patrol unit is now a big part of the Hilliard Days Parade.

This past year our shop has grown with volunteer and calling. Tanya Branson, one of the Crime Victim Advocates with C.O.P.S. is headquartered out of the Northeast shop as well as the acting President heading up the operations of the shop and coordinating the volunteers.

We are excited to continue to grow and engage in our beloved north side community in 2020!



## C.O.P.S. LOGAN



Reopening C.O.P.S. Logan this spring was the premier event of 2019! Many thanks for all of the people who helped renovate and turn the house on 2927 N. Perry into our Logan C.O.P.S. shop. A special thanks to Kelly Cruz and the many volunteers for their dedication and many hours working on this project.

Starting over at pretty much ground zero, the Logan shop got off to a good start and things are really starting to pop. With new leadership, the Logan shop is now open all week and soon will be open six days a week. Thanks to an aggressive outreach effort, the Logan shop is getting new volunteers at a rapid pace. They are opening new Block Watch groups and reviving the NOP program with new leaders. We are also working on getting more people involved in the program. We are working hard to get all of the valuable programs the Spokane C.O.P.S. up and running. We are developing good working relationships with our SPD resource officer Dave Kaurin and our DOC officers. The future looks bright at the Logan shop as we engage the community and partner with them.

## GRAND RE-OPENING!



## C.O.P.S. SOUTHWEST



The move to 1403 W Third Ave and changing our name from Greater Spokane Inc. in 2017 has resulted in tremendous growth for the shop that we are now seeing in 2019. Our volunteer hours have increased 63% over 2018 which is a direct result of having a location in closer proximity to Browne's Addition and the lower South Hill neighborhoods.

In 2019, the shop started using a volunteer car that enabled us to increase our Neighborhood Observation Patrols along with moving a speed radar sign around the South Hill for SPD. The shop has also been able to provide more support to the community than thought citizens are becoming aware of our location and are using the shop.

We have had an increase in average monthly citizen contacts by 18% and a decrease in voice messages by 56%. I think this is a big metric for the shop as we are having improved customer service direct contact.

Continued growth in 2020 will be our goal. We just introduced Latent Finger Printing for vehicle break-ins in January. We plan on providing Block Watches with ever increasing support, with increased NOP, patrols and Crime Prevention Through Environmental Design, in efforts to make the neighborhoods safer. We also have interest in seeing if local businesses would like to participate in a Business Watch program.

C.O.P.S. Southwest is heavily used by the Spokane Police Department. There are always a few officers here at the shop. They love the location and having a few police vehicles parked in front is a huge deterrent to crime.

## C.O.P.S. WEST



C.O.P.S. West had a busy 2019 season and worked on being more involved with the community. We hosted several events to bring law enforcement officers and the community together.

In January, our C.O.P.S. shop hosted a chili dog feed for law enforcement appreciation day and had easily 50 attend. This helps to keep officers coming to our shop, providing a positive police presence in the west central neighborhood.

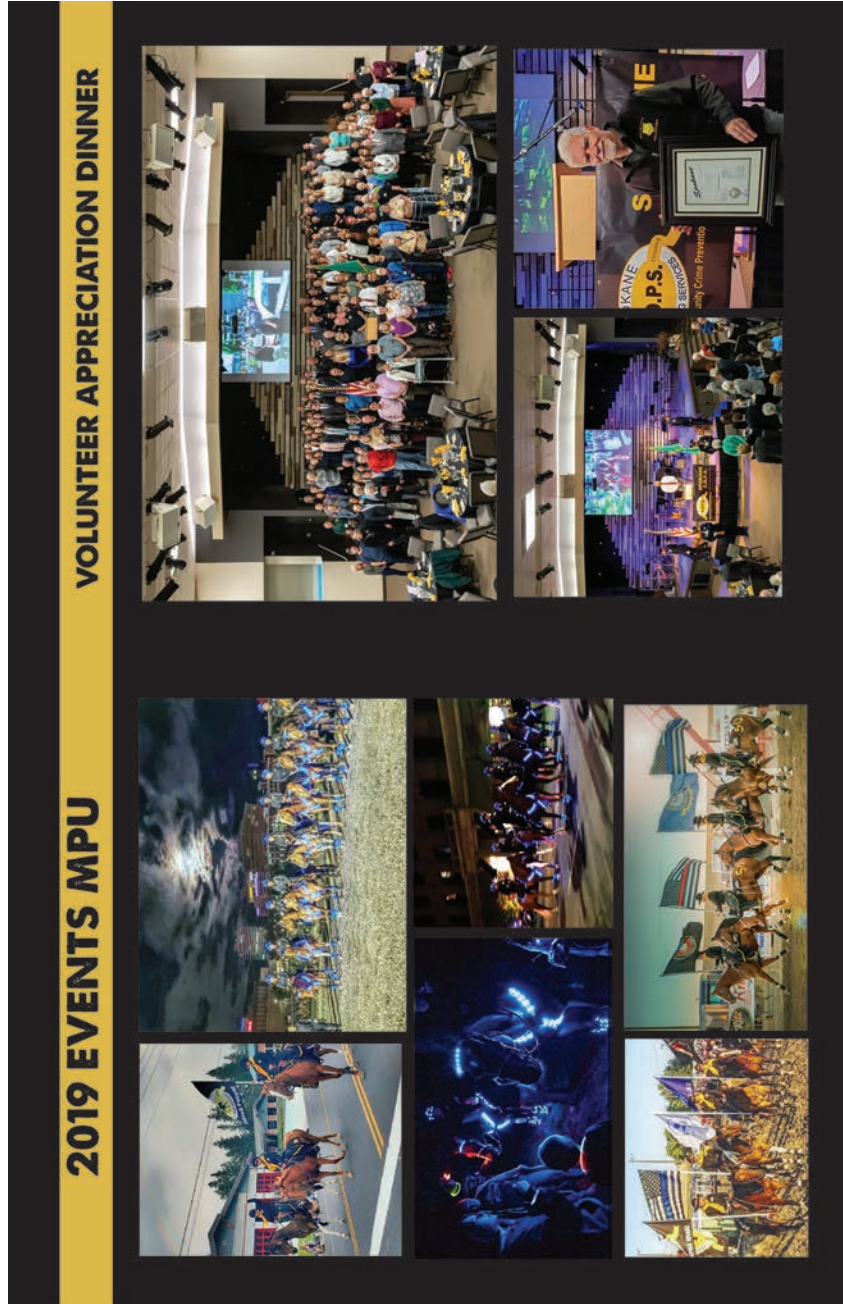
In October, we hosted the second annual Halloween Trick and Treat event. Mounted Patrol volunteers handed out candy and took photographs for the costume contest while Paws on Patrol took photographs for the costume contest while Paws on Patrol took photographs for the costume contest. We had 200 families attend this fun event!

In December, we hosted another free family event with our official Santa and Mrs. Claus. Mounted Patrol volunteers handed out refreshments and cookies and took photographs of kids with Santa. We had 50 in attendance for this event.

Our National Night Out party was once again in Cannon Park to hopefully draw families into the city park. Food and refreshments were provided and we had over 50 people mingle with their neighbors discussing crime prevention and sharing information on their Block Watches.

In December we opened our shop full time throughout the week drawing in more people from the community to seek resources and services. We offer latent fingerprinting services and have started to NOP the neighborhood again paying close attention to our city parks and our nuisance related houses.









## WHAT TO WATCH FOR IN 2020

**RISE:** We are excited to be launching our tactical survival mindset course and curriculum that was developed alongside the Spokane Police Department and the Washington State Dept. of Corrections. The purpose of this program is to build strong and empowered members of our community through the devastating wave of domestic violence that has plagued our community. This trauma sensitive curriculum will focus on teaching and guiding individuals how to refuse to be a victim or be re-victimized through situational awareness, evasion, escape and enhanced mental strength.

**SCHOOL ROUTE PATROL:** We'll be getting into school areas and focusing our NOP patrols on areas that attention around walking school routes. We want kids to be safe walking to and from school, so expect a big presence from us there.

**OFF-ROAD PATROL:** For 2020, we are putting together an off road patrol. This unit will be made up of ATVs and riders, with the intent of being the eyes and ears of SPD out in areas that are difficult to access on foot, and perhaps impossible in cars. In addition, we'll help clean up debris and remove graffiti as well, making our parks and other areas inviting again for our community.

## COMMUNITY PARTNERS

City of Spokane	Spokane Public Schools
Spokane City Council	Police Advisory Committee
Spokane Police Department	WA State Department of Commerce
Washington State Dept. of Corrections	WA State Attorney General's Office
Spokane County Sheriff's Office	Event Rents
Sheriff's Community Oriented Policing Effort (S.C.O.P.E.)	Greater Spokane Substance Abuse Council
Spokane County Department of Emergency Management	Schoedel & Schoedel Accounting
Spokane Fire Department	Spokane County Prosecutor's Office
Lutheran Community Services	Ferry's Catering
Frontier Behavioral Health	Faith Bible Church
Spokane Regional Health District	Papermill Printing
Spokane County Superior Court	Copy Rite Printing
Gonzaga University	Pressworks
Whitworth University	KXLV
YWCA	KHQ
Northwest Fair Housing Alliance	KREM
Washington State Crime Prevention Council	City Channel 5
Knox Presbyterian Church	Outlaw Woman
First Presbyterian Church	







Ms. SCHAKOWSKY. And thank you.  
 Professor Kovacic, it is yours for 5 minutes. You are recognized.

**STATEMENT OF WILLIAM E. KOVACIC**

Mr. KOVACIC. Thank you, Madam Chair. Thank you, Ranking Member and members of the committee. I am very grateful for having the opportunity to participate in these proceedings.

I am going to suggest a series of steps that you and your colleagues can take to put the FTC in a better position to address the formidable challenges that you have mentioned.

I acknowledge the wonderful work that I think the FTC has done in a terrible time in which the challenges have intensified, and they have had to move out of their building and do everything remotely.

I speak from my experience at the FTC and my current work as a non-executive director on the board of the United Kingdom's Competition and Markets Authority. I don't speak on behalf of the agency, but I speak with an awareness of what the CMA, the FTC, and others have done in an extraordinary circumstance when they have had the hardest challenges, and have had to work in a remarkably difficult setting. I think they performed admirably. I have some thoughts about what you and your colleagues can do to put them in a position to do still better.

Let me start by offering three suggestions that involve new legislation and then to come up with three that involve your role as an oversight body and as a forum for holding policy discussions about what the FTC and others should do.

First, on the legislative side, I simply echo the priority that all of you have given, that Bonnie Patten has just given, as well, to repairing what is likely to be a hole in 13(b) authority. My own view of the AMG case which Bonnie just discussed is that the FTC will lose that case. The oral argument was not favorable, from a wide variety of perspectives within the Supreme Court.

I think priority number one is to be prepared as soon as possible to repair the damage that an adverse decision would do. If the Commission does not have the ability to disgorge ill-gotten gains from misconduct, the deterrent effect of its enforcement power is considerably weakened. That is priority number one. You are aware of that.

Second, I would make major new investments in the capability of the Federal Trade Commission. Let's remind ourselves of what Congress has asked it to do. It is not only the principal consumer protection agency in the country, it is a major antitrust agency, and it is the principal U.S. data protection agency. But we pay peanuts to carry out those functions. We pay low salaries compared with even what other Federal officials get. And we provide a very modest budget, not even quite \$350 million a year.

My suggestion: Raise the compensation of FTC employees, at least to the level of the Consumer Financial Protection Bureau. That salary scale is fully 20 percent higher. Why and in what respect is financial services consumer protection more important than the concerns we mentioned?

Second, and more dramatically, I would give the FTC a billion dollars a year to do its job. I would monitor the performance with

that money, but my view is that we are demanding Mercedes-like performance, but we want to pay for a Chevy instead. And that doesn't happen in real life. I see a real measure of the sincerity of the Nation and its elected officials to deliver on this promise its willingness to fund these activities appropriately. Otherwise, we are just kidding ourselves about what we want to be done.

Related to that, major investments in upgrading the FTC system built over a period of 20, 25 years to improve its capacity to collect data on misconduct, and to apply it—a major upgrade of the Sentinel System—and to mimic the experience of the Competition and Markets Authority to build up a data team. The Competition and Markets Authority has a team of 40 technologists that now work on these issues.

A third legislative proposal is to eliminate gaps in the FTC's jurisdiction by eliminating the exceptions for common carriers, banking and financial services, and not-for-profit organizations.

Finally, three thoughts about the use of oversight authority.

One, as the ranking member mentioned, boost cooperation. I suggest to you that taking money away with civil remedies is not going to keep serious bad guys from doing what they do. The only solution there is cooperation with criminal enforcement authorities to take away their freedom. If we are not going to do that, again, I think we are not really digging in to the seriousness of the problem and addressing it.

Second, invite the FTC and its partners at the State and local level to sit down with you and talk about what they learned by way of doing innovative things to address the COVID crisis and what gaps have to be filled. That should be an ongoing collaboration between the committee and the public enforcement agencies.

And last, to confront the future design of the FTC. Should you adopt new privacy legislation, what do we want the FTC to do in the future?

My thanks to the committee for the chance to be here.

[The prepared statement of Mr. Kovacic follows:]



**U.S House of Representatives**  
**Committee on Energy and Commerce**  
**Hearing Before the Subcommittee on Consumer Protection and Commerce**  
**Safeguarding American Consumers: Fighting Frauds and Scams During the**  
**Pandemic**  
**Testimony of William E. Kovacic<sup>1</sup>**  
**February 4, 2021**

**Introduction**

I thank the Subcommittee and its leadership for the invitation to participate in these proceedings. The COVID Pandemic has provided a merciless stress test for all government agencies, including the consumer protection regulators. The Federal Trade Commission (FTC) and its partners at the state and local level have responded to this challenge with extraordinary dedication. The commitment, drive, and ingenuity of these institutions is inspiring to behold. With their offices shuttered and staff working remotely, our consumer protection agencies have devised creative methods to challenge fraudulent, oppressive commercial conduct that often follows in the wake of catastrophe.

The pandemic regulatory stress test has illuminated weaknesses in the framework through which the United States and other countries address supplier misconduct amid crisis conditions. My testimony derives lessons from this experience to suggest how Congress and the regulatory community at home and abroad might repair weaknesses in the existing consumer protection framework. I also identify how the regulators in the past year have improved operational techniques and devised new approaches for the exercise law enforcement and related policy duties. I recommend that agencies make recent, positive policymaking innovations lasting elements of

---

<sup>1</sup> Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, King's College London; Non-Executive Director, United Kingdom Competition and Markets Authority. I am indebted to Robert Anderson, Anna Caroline Müller, Will Hayter, Alison Jones, Antonella Salguiero, and Nadhya Sporysheva for many useful discussions about the subjects of my testimony. The views expressed here are the author's alone. Contact: [wkovacic@law.gwu.edu](mailto:wkovacic@law.gwu.edu).

agency practice. In preparing my testimony, I have been guided by recent experience in the US and by the work of the United Kingdom's Competition and Markets Authority (CMA), where I serve as a Non-Executive Director. In today's proceedings I do not speak on behalf of the CMA, but my comments are informed by the CMA's work over the past year.

**Filling Gaps and Correcting Vulnerabilities: Priorities for New Legislation or Deliberations that Could Yield New Legislation**

In the following areas, I believe new legislation is necessary to improve the effectiveness of the US consumer protection regime.

***Federal Trade Commission Remedial Powers***

The Supreme Court may be poised to rule that the FTC lacks authority under Section 13(b) of the Federal Trade Commission Act to obtain restitution and similar forms of equitable relief in a variety of consumer protection cases.<sup>2</sup> The Commission (and Congress) must be prepared for the possibility that the Court will issue a ruling adverse to the agency, a move that would hamper FTC consumer protection enforcement and cast doubt over the agency's ability to obtain disgorgement in antitrust cases. If the Court rules against the Commission, Congress should amend the FTC Act to make clear its intent to give the FTC power to obtain the full range of equitable remedies, including monetary recoveries as remedies for consumer protection violations. The ability to deprive wrongdoers of the financial gains from misconduct provides compensation for victims and increases deterrence by diminishing the returns to fraud and other forms of oppressive behavior.

Another enhancement of the FTC's remedial authority I recommend for the Committee's consideration would be to establish a US replica of the markets regime now implemented in the United Kingdom by the Competition and Markets Authority.<sup>3</sup> Part 4 of the Enterprise Act 2002<sup>4</sup> enables the CMA to investigate markets where it appears that the structure of the market or the conduct of suppliers or customers in the market is harming competition and, where problems are

<sup>2</sup> On January 13, 2021, the Supreme Court heard oral argument in the appeal from *Federal Trade Commission v. AMG Capital Management, LLC*, 920 F.3d 417 (9<sup>th</sup> Cir. 2018). From my own viewing of the video of the argument, a majority of the Court's members seemed skeptical about the FTC's defense of its 13(b) remedial powers.

<sup>3</sup> William E. Kovacic, *Market structure and market studies*, in *COMPETITION LAW AND ECONOMICS* 30 (Jay Pil Choi, Wonhyuk Lim & Sang-Hyop Lee eds., 2020).

<sup>4</sup> Enterprise Act 200, c.40, Section 4 ("Market Investigations").



identified, to impose remedies (including price caps) and make proposals to legislators to correct observed problems. This would enable the FTC to study sectoral or economy-wide phenomena and to order remedies regardless of whether the conditions or practices in question violate existing consumer protection laws.

### ***Federal Trade Commission Jurisdictional Limitations***

Congress should eliminate statutory exemptions that deny the FTC jurisdiction over common carriers, not-for-profit institutions, the business of insurance, and banks.<sup>5</sup> Most of these jurisdictional limitations date back to the agency's creation. Some exemptions may have made sense when established; the economy and the affected fields of activity were much different. Today, the exemptions are embarrassing anachronisms that diminish the FTC's capability to perform the competition policy role that Congress set out in 1914 and to carry out the consumer protection and privacy responsibilities that now are key elements of the agency's law enforcement portfolio. On many occasions over the past two decades, the FTC has pled with the Congress to revisit and eliminate – or at least curtail – the jurisdictional exemptions.

### ***Federal Trade Commission Budget and Compensation Levels for Employees***

There is a grave mismatch between the duties Congress has assigned the FTC and the resources it has given the agency to carry out its mandate. There is a serious need to raise the FTC's budget, but not simply to build a larger staff by hiring more people. Reforms to the federal compensation system are necessary to attract and retain a larger number of elite personnel. I do not see how the FTC or many other public agencies can recruit and retain necessary personnel without a significant increase in the salaries paid to managers and staff.

Consider two possibilities for compensation reform. The first is to align FTC salaries with the highest scale paid to the various US financial service regulators. One model would be the compensation scale used to pay employees of the banking regulatory agencies; the salary scale for these bodies exceeds the General Schedule (GS) federal civil service wage scale by roughly twenty percent.<sup>6</sup> In adopting the Dodd-Frank

<sup>5</sup> See David A. Hyman & William E. Kovacic, *Implementing Privacy Policy: Who Should Do What?*, 29 FORD. INTELL. PROP. MEDIA & ENT. L.J. 1119, 1133 (2019).

<sup>6</sup> See Paul H. Kupiec, *The Money in Banking: Comparing Salaries of Bank and Bank Regulatory Employees* (American Enterprise Institute, April 2014), [https://www.aei.org/wp-content/uploads/2014/04/-the-money-in-banking-comparing-salaries-of-bank-and-banking-regulatory-employees\\_17170372690.pdf](https://www.aei.org/wp-content/uploads/2014/04/-the-money-in-banking-comparing-salaries-of-bank-and-banking-regulatory-employees_17170372690.pdf).

Wall Street Reform and Consumer Protection Act in 2010,<sup>7</sup> Congress concluded that the importance of the mission of the new Consumer Financial Protection Bureau (CFPB) warranted higher salaries for the agency's personnel. If the higher salary scale made sense for the CFPB, I see no good reason why a more generous compensation schedule is not appropriate for what is the nation's leading consumer protection agency (and its leading federal data protection authority).<sup>8</sup>

A second, more ambitious alternative would be to triple the FTC's existing budget of about \$330 million per year and use the increase mainly to raise salaries and partly to add more employees. This experiment might be carried out for a decade to test whether a major hike in pay would increase the agency's ability to recruit the best talent, retain the talent for a significant time, and apply that talent with greater success in a program that involves prosecuting numerous ambitious cases and devising other significant policy initiatives.

A major increase in compensation, either by adopting the CFPB model or trying our my more ambitious proposal, is a crucial test of our national commitment to improve the foundations for effective consumer protection enforcement. The nation should spend what it takes to get the best possible personnel to run the difficult cases (and carry out other measures, such as the promulgation of trade regulation rules) that will be the pillars of a new, expanded enforcement program. Such steps will become even more important if new political leadership seeks to close the revolving door, which has operated as a mechanism to encourage attorneys and economists to accept lower salaries in federal service in the expectation of receiving much higher compensation in the private sector at a later time.

#### ***Federal Trade Commission Administrative Process***

I propose two legislative changes to the FTC's administrative framework to enable the Commission to carry out the full range of its duties, including consumer protection, more effectively. The first is to relax the limits that the Government in

---

<sup>7</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>8</sup> As a member of the FTC, I observed firsthand how the disparity in salaries between the CFPB and the FTC resulted in a significant migration after 2010 of the Commission's elite consumer protection attorneys and economists to the CFPB. Many of these individuals were major contributors to the FTC's consumer protection programs because they combined outstanding intellectual skills with decades of experience (much of it in middle-level and senior management positions) at the Commission. It was impossible to replace them with individuals of comparable skill and experience, and the FTC's performance suffered as a consequence.



the Sunshine Act<sup>9</sup> imposes on the ability of commissioners to deliberate together privately to discuss matters of strategy and tactics. Among other consequences, the Sunshine Act severely limits the ability of a quorum of commissioners to deliberate over matters of agency policy except in meetings open to the public.<sup>10</sup> Policy planning, strategy-setting, and case selection functions cannot be executed at the highest level of effectiveness without this reform. A central reason to entrust governance to a multimember body, rather than to govern an agency with a single executive, is to gain the benefits of deliberation. Collective decisionmaking, and the informal collaborative discussions that surround it, are deemed useful to improve the agency's ability to make wise choices when setting priorities, formulate strategies for litigation and nonlitigation programs, and selecting projects. As now written and interpreted, the Sunshine Act severely reduces the FTC's ability to realize the theoretical advantages of collective governance. I know of no jurisdiction abroad that relies on an administrative commission to implement consumer protection law and encumbers the enforcement with so many restrictions on collegial decision making.<sup>11</sup> In numerous conversations, officials with consumer protection agencies in other jurisdictions with multi-member commissions express disbelief that the United States created an administrative mechanism with enormous potential and then chose to undermine its implementation so severely.

To serve the accountability and transparency aims that motivated the adoption of the Sunshine Act, Congress could press the FTC to use other disclosure techniques. Here, as well, experience in foreign jurisdiction suggests a superior alternative path. A number of jurisdictions achieve desired transparency through measures that require their competition authorities to publish an annual statement of priorities, to issue their prioritization criteria, to provide explanations of the decision to prosecute and not to prosecute in individual cases, and to issue annual reports that discuss the agency's progress in realizing its goals.<sup>12</sup> In many instances, documents that set out priorities, case selection criteria, and results achieved are issued first in draft form

<sup>9</sup> P.L. 94-409, 90 Stat. 1241 (1976).

<sup>10</sup> The Sunshine Act and its requirements are analyzed in Reeve T. Bull, *The Government in the Sunshine Act in the 21<sup>st</sup> Century* (Mar. 10, 2014) (report prepared for the Administrative Conference of the United States), <https://acus.gov/report/final-sunshine-act-report>.

<sup>11</sup> My experience as a non-executive director of the CMA has highlighted how the FTC is largely foredoomed from using policy planning and prioritization techniques that are commonly employed to great advantage in other jurisdictions.

<sup>12</sup> For example, it is sensible for the FTC to emulate the practice of many foreign authorities and more frequently issue closing statements when the agencies decide not to take action in a case. The triggering event in the United States might be matters in which the agency has used compulsory process to conduct an inquiry.

for public comment. In addition to these measures, agency officials make regular appearances before legislative committees and in public fora to discuss the work of their institutions. These techniques can be supplemented with a program of ex post evaluation that tests, through actual experience, the assumptions that guided agency decisions in specific cases and supplies an additional basis for public debate about the agency's policymaking. Experience with the disclosure mechanisms described here suggests that other jurisdictions achieve informative public disclosure, and rigorous agency accountability, without the limits imposed by the Sunshine Act.

A second legislative measure is to enable the FTC to recruit and hire competition and consumer protection specialists to serve as administrative law judges.<sup>13</sup> The administrative adjudication of cases was a crucial basis for the establishment of the Commission in 1914. Several pillars of the institution were designed solely, or principally, to support administrative adjudication: the multi-member governance configuration (with the board performing the functions of deciding to prosecute and of hearing appeals from administrative cases), the broad, scalable mandate of Section 5 of the FTC Act,<sup>14</sup> and special information gathering powers to inform the development of legal standards to meet evolving commercial conditions. All of these characteristics put administrative adjudication at the center of the agency's work. There was little point in Congress designing the agency as it did except to create a platform for administrative adjudication and norms creation.

The proceedings before the administrative law judge (ALJ) are the vital first step of the FTC's administrative process. The administrative hearing collects and analyzes evidence and applies the law. It is the foundation for subsequent deliberation by the Commission sitting as a plenum in appeals. At present, the Commission has no ability to insist that ALJ appointees have significant prior experience in competition law or consumer protection law. The ALJ selection process is controlled by government-wide processes that accord no weight to the FTC's institutional considerations. Congress can correct this deficiency by amending the government's ALJ selection process to use competition and consumer protection expertise as a key criterion in the choice of FTC ALJs.

---

<sup>13</sup> See William E. Kovacic, Chairman, U.S. Federal Trade Commission, *THE FEDERAL TRADE COMMISSION AT 100: INTO OUR SECOND CENTURY* 42-45 (2009)

<sup>14</sup> As amended by the Wheeler-Lea Act, Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition" and proscribes "unfair or deceptive acts or practices." 15 U.S.C. §45.



### **Priorities for Future Legislative Oversight and Policy Discussion**

In this section I identify possible focal points for congressional oversight and policy discussions.

#### ***Preserving and Extending Recent Operational Innovation and Identifying Other Areas to Improve FTC Capacity***

I suggest that the Subcommittee convene formal proceedings or conduct informal discussions with the FTC to ask the agency to describe what new measures it devised to deal with the COVID crisis and how it adapted existing procedures and policy tools to detect and attack fraudulent schemes and to provide information to consumers. It appears that the Commission used a number of innovative methods to provide additional information to consumers and to expedite, as much as possible, the investigations and cases involving fraud. The Subcommittee might engage with the Commission in an ongoing conversation about what worked well and ought to be continued in more normal times.

The COVID stress test undoubtedly identified for the Commission areas in which greater expenditures and changes to operations are necessary for the future. This might be an ideal moment for the Subcommittee and the Commission to consider what type of capital investment might be needed to upgrade the agency's Consumer Sentinel system or the create net information networks to join up the FTC more closely with other public agencies with consumer protection duties and with civic bodies that monitor problems affecting consumers.

This would also be an appropriate time for a stocktaking exercise in which the Subcommittee and Commission reflect upon ways that, based on the experience of the past year, the pandemic has changed the commercial environment for the longer term – in some instances, creating conditions that pose greater hazards for consumers but in other cases inspiring commercial innovations that benefit consumers. In short, the Subcommittee might use its policy making deliberations to assess, with the FTC and other consumer protection bodies, how COVID has altered the commercial landscape in ways that dictate adjustments in consumer protection policy.

One of the most important policy innovations undertaken by the CMA in recent years has been the creation of a Data, Technology and Analytics (DaTA) unit.

Formed in 2018, the group now numbers forty professionals, many with professional training and experience in fields such as computer science and engineering. The CMA formed the DaTA group out of recognition that a major enhancement of its scientific capabilities was necessary to enable the agency to meet the challenges, in its capacity as a competition agency and a consumer protection body, presented by developments in highly dynamic, high technology commercial sectors. It would no longer be possible to rely chiefly, or exclusively, on attorneys and economists to staff relevant projects.

The CMA DaTA team has proved to be an extremely valuable asset during the pandemic. Among other contributions, the DaTA unit played a vital role in the analysis of consumer complaints related to COVID. The unit's analytics group enabled the CMA to identify trends almost in real time and to publish weekly updates about trends in complaints. The results of the data analysis, in turn, enabled the CMA to focus its law enforcement efforts and related publicity work immediately upon areas of greatest urgency and to give valuable guidance (informed by reliable data) to other government bodies. I urge the Subcommittee to encourage the FTC to develop a comparable capability and to press ahead with efforts in Congress to fund its development.

#### ***Larger questions about configuration of US Consumer Protection System***

The remedies issues mentioned at the beginning of my testimony are only one set of developments that, I expect, will force a reconsideration of the institutional arrangements through which the federal government and its state and local partners implement consumer protection policy. We may see in the next year the adoption of long-awaited national privacy legislation. Should this come to pass, Congress must choose a mechanism for its enforcement. Should it give the new mandate to the FTC, create a standalone federal privacy agency, or devise other enforcement and policymaking frameworks? Whatever choice is made will have a major impact on the future operations of the FTC.

We also may see the courts revisit the basic question of whether the president may remove the members of the independent federal regulatory agencies without cause. My own interpretation of recent cases, such as the Supreme Court's decision in 2020 in *Seila Law LLC v. Consumer Financial Protection Bureau*, is that the Court may be minded to come back on the issue of the removal power in future cases and, perhaps, to alter fundamentally a key pillar of the modern regulatory state. There have been rumblings in the lower courts, as well, in the form of opinions that openly

express doubts about the soundness of the FTC's administrative adjudication system.<sup>15</sup>

All of these developments suggest that we may be on the threshold of a basic reassessment, driven by the rulings of the federal courts, about the proper structure and allocation of authority to the regulatory bodies on which Congress has relied heavily for over a century to regulate commerce and protect consumers. This seems an increasingly urgent topic for consideration by the Subcommittee and agencies, such as the FTC, subject to its oversight.

### ***FTC Rulemaking Authority***

This is an ideal time for the Subcommittee to reflect upon what adjustments it might wish to make, beyond measures already adopted recently in COVID-related legislation, to clarify and augment the FTC's powers to issue trade regulation rules governing consumer protection and competition matters. In hearings and other policy deliberations, the Subcommittee might consider what mix of instruments it wishes the Commission to exercise (and what remedies to apply) in the future: the Magnuson-Moss rulemaking process, more generic Administrative Procedure Act rulemaking authority, or sector-specific grants of rulemaking powers. In doing so, I think it is sensible for the Subcommittee to be guided by the awareness that the federal judiciary today is unlikely to embrace statutory interpretation approaches that courts have used in the past to infer broad grants of rulemaking authority to the Commission for various purposes.<sup>16</sup>

### ***Interagency Cooperation***

The US consumer protection regime is a decentralized system that distributes policymaking and law enforcement power across numerous agencies at the federal, state, and local levels. Federal statutes coexist with myriad state laws mandates, some with powerful enforcement mechanisms.

The extraordinary decentralization and multiplicity of enforcement mechanisms supply valuable possibilities for experimentation and provide safeguards in case any single enforcement agent is disabled (*e.g.*, due to capture, resource austerity, or

<sup>15</sup> *Axon Enterprise v. Federal Trade Commission*, 2021 U.S. App. LEXIS 2374 (9<sup>th</sup> Cir., Jan. 28, 2021).

<sup>16</sup> One case whose analytical foundations might be seen by some judges as worthy of a rethink is *National Petroleum Refiners Ass'n v. Federal Trade Commission*, 482 F.2d 632 (D.C. Cir. 1973).

corruption).<sup>17</sup> Among public agencies, there is also the possibility that federal and state government institutions, while preserving the benefits of experimentation and redundancy, could improve performance through cooperation that allows them to perform tasks collectively that each could accomplish with great difficulty, or not at all, if they act in isolation. Congress should use its oversight powers to encourage the FTC and the states to adopt collaborative approaches that preserve the multiplicity of actors in the existing U.S. regime but also promise to improve the performance of the entire system through better inter-agency cooperation – to integrate operations more fully “by contract” rather than a formal consolidation of functions in a smaller number of institutions.

For models of successful interagency cooperation, one might study the successful policy integration that has taken place through the work of the United Kingdom Competition Network and the European Competition Network. In both examples one can see the mix of organizational structures and personal leadership that enabled agencies collectively to accomplish policy results that would have been unattainable through the work of single agencies operating in isolation. The United States has no equivalent to these institutions, which have served valuable policy formation and coordination functions abroad. The development by US consumer protection bodies of such networks could provide a useful way to replicate the success achieved in other jurisdictions. Other useful measures would include the creation of a regular program of secondments in which the leading agencies in the United States – federal and state bodies, alike – would swap personnel to build familiarity with the partner institutions and help create the trust and understanding that improve cooperation.

The Subcommittee’s oversight activities can be a valuable means for guiding the FTC and other consumer protection bodies agencies to cooperate more extensively in ways that pool experience and knowledge and enable federal and state officials to get the greatest value from their consumer protection expenditures and respond more quickly and effectively to fraud and patterns of misconduct. The Subcommittee might help foster the expansion and formalization of interagency contacts through secondments, the formation of working groups, and the creation of U.S. equivalents of the ECN and the UKCN.

Promoting agency efforts to expand their existing impact evaluation programs – especially common evaluation exercises performed by federal, state, and local

---

<sup>17</sup> David A. Hyman and William E. Kovacic, *State Enforcement in a Polycentric World*, 2019 B.Y.U. L.Rev. 1447.

agencies, could be one part of a broader effort by Congress to support efforts to evaluate the effects of past antitrust cases – especially those with significance for the digital marketplace. Committee hearings could provide a regular forum in which agency officials, practitioners, and academics examine the effects of completed matters. Committees could cooperate with universities and think tanks to hold programs that study past experience. One step in this direction might be for consumer protection agencies to convene an event that focuses on lessons learned for consumer protection policy from the pandemic experience.

### ***FTC Risk Preferences***

Congress should engage the agencies in a regular conversation about how risky a program of litigation and rulemaking it wants the agencies to undertake – and what expectations Congress brings to the assessment of a litigation program. Does Congress have in mind a specific rate of success? By what measure will an agency's litigation effectiveness be evaluated? How does Congress believe agencies should account for the risk of political backlash – from either end of Pennsylvania Avenue – once the agencies have launched matters that attack powerful economic interests? How can Congress today credibly commit itself not to attack agencies tomorrow for bringing cases that incumbent legislators wish the agencies to pursue?



Ms. SCHAKOWSKY. Thank you so much for your testimony.  
And last, but not least, Ms. Rich, you are recognized for 5 minutes for your testimony.

#### STATEMENT OF JESSICA RICH

Ms. RICH. Thank you, Chair Schakowsky, Ranking Member Bilirakis, and members of this subcommittee. I am really pleased to be here to discuss the challenges of fighting fraud during the pandemic.

I am no longer at the FTC, but I spent most of my career there, actually, 26 years, the last 4 of those years as its Director of Consumer Protection. I care deeply about ensuring a safe and fair marketplace for the American public.

One of the biggest challenges in consumer protection, as we have all been talking about here today, is fighting fraud, a pernicious problem that steals from consumers, often those least able to afford it, undermines their trust, and distorts the functioning of the marketplace.

In times of crisis, fraud can be especially relentless. Con artists prey on distressed consumers, offering bogus health cures, non-existent financial aid, and many other scams, often posing as a government agency or official. This happened with Hurricane Katrina and the Great Recession, and it is happening now.

Over the past year the FTC has received many consumer complaints related to COVID-19 and has responded with consumer alerts, warning letters to scammers, and law enforcement. As of December, thanks to the leadership of this committee, the FTC can now impose fines on the scams' perpetrators. However, the FTC is facing serious challenges in its broader fight against fraud, which is the focus of my testimony today.

In my written testimony I flagged four issues.

First is the FTC's authority to obtain restitution under 13(b) of the FTC Act. As everybody has discussed extensively today, it is under risk. For over 40 years, the FTC has used section 13(b) to return many billions of dollars to consumers and small businesses victimized by fraud and deception. Until recently, every circuit court to consider the issue held that the FTC could do so.

Notably, 13(b) is the only provision in the law that has enabled the FTC to seek in the same action both an injunction against FTC Act violations and restitution for consumers. The adverse rulings in the circuit courts have already undermined the FTC's ability to obtain restitution in those circuits. An adverse ruling in the Supreme Court would be devastating.

Section 13(b) is simply the most efficient and effective tool that the FTC has to stop illegal conduct, prevent defendants from profiting from it, and return money to consumers. Without it, the FTC has to engage in either a cumbersome two-step process with two separate back-to-back lawsuits, or limit restitution to those situations where it is enforcing a rule which is a subset of cases. These options will severely hinder the FTC's ability to get money back to consumers, and I hope that Congress will restore the authority to do that, that the FTC has been using for over 40 years.

The second issue I flagged is the ability of the FTC and others to hold accountable the entities that enable frauds to thrive, includ-

ing the platforms through which scammers disseminate fraudulent information. At the FTC and elsewhere, defendants of all types argue they are immune from liability under section 230, often forcing protracted litigation to resolve the issue. Although 230 reform is complex and beyond the scope of this hearing, there may be other measures, like last year's Inform Consumers Act, that could create much-needed accountability short of wholesale 230 reform.

Third, fraud can have a disproportionate impact on certain communities such as seniors, veterans, African Americans, and Latinos. During my tenure at the FTC we created an ambitious outreach and research initiative called Every Community, the goal of which was to ensure that the FTC was reaching and protecting the diverse communities victimized by fraud. The FTC should scale up this program again now, including by collecting more data with appropriate safeguards to enable a broader examination of whether the FTC is reaching different communities. Also, it should consider hiring experts on racial equity and representation to assist with this effort.

Finally, the FTC needs stronger authority to protect consumers' privacy, including the ability to seek penalties for first-time violations. One lesson of the pandemic was that Americans refused to use contact tracing apps, which could have been helpful to track the disease, largely due to concerns that the data wouldn't be protected from misuse. This subcommittee has shown very strong support for privacy legislation in the past, and I hope that will continue.

Thank you again for allowing me to be here today.  
[The prepared statement of Ms. Rich follows:]

STATEMENT OF JESSICA L. RICH  
Distinguished Fellow, Institute of Technology Law and Policy  
Georgetown University Law Center

Before the  
Subcommittee on Consumer Protection and Commerce

Committee on Energy and Commerce  
United States House of Representatives

On  
SAFEGUARDING AMERICAN CONSUMERS:  
FIGHTING FRAUD AND SCAMS DURING THE PANDEMIC

February 4, 2021

## I. INTRODUCTION

Chair Schakowsky, Ranking Member Bilirakis, and members of this Subcommittee, I am Jessica Rich, Distinguished Fellow at the Institute for Technology Law and Policy at Georgetown University Law Center. I am pleased to appear before you today to discuss the challenges of fighting fraud during the pandemic.

I joined Georgetown almost a year ago, and, before that, I was a Vice President at Consumer Reports and, briefly, an independent consumer protection consultant. But I spent most of my career (26 years) working at the Federal Trade Commission, the last four (2013-2017) as Director of the Bureau of Consumer Protection. I care deeply about consumer protection, and in ensuring a safe and fair marketplace for the American public.

One of the biggest challenges in consumer protection is fighting fraud, a pernicious problem that steals from consumers (often those least able to afford it), undermines their trust, and distorts the fair functioning of the marketplace. In “normal” times, fraud is a serious and widespread problem, ranging from telemarketing and get-rich-quick scams, to pyramid schemes and income frauds, to phishing and identity theft. In times of crisis, fraud can be relentless. Con artists seize the opportunity to prey on distressed consumers, offering bogus health cures, defective emergency supplies, non-existent financial aid, and many other scams – often posing as a government agency or official. This happened with Hurricane Katrina<sup>1</sup> and the Great Recession,<sup>2</sup> and it is happening again now with the COVID-19 pandemic.

The primary federal agency charged with fighting this type of fraud is the FTC. Since early last year, the FTC has received many consumer complaints related to COVID-19 – to date, 338,060 complaints reporting almost \$320 million in losses.<sup>3</sup> Based on its prior experience with fraud related to crises and natural disasters, the FTC was able to respond quickly with consumer

<sup>1</sup>See FTC Press Release, *FTC Testifies on Post-Katrina Help for Consumers* (September 22, 2005), <https://www.ftc.gov/news-events/press-releases/2005/09/ftc-testifies-post-katrina-help-consumers>.

<sup>2</sup>See FTC Press Release, *FTC Testifies About Crackdown on Scams Tied to the Economic Downturn*, <https://www.ftc.gov/news-events/press-releases/2009/07/ftc-testifies-about-crackdown-scams-tied-economic-downturn> (July 14, 2009).

<sup>3</sup>See FTC COVID-19 and Stimulus Reports: Consumer Sentinel Network Reports, <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map> (last visited February 1, 2021).

alerts, warning letters to scammers, a dedicated website providing guidance to the public, and law enforcement.<sup>4</sup> As of December, thanks to the leadership of Chair Schakowsky, the FTC will now be able to impose fines on the perpetrators of these frauds<sup>5</sup> – legal authority that it lacked until Congress came to the rescue. This new authority will increase the FTC’s ability to deter and punish COVID-19-related fraud and deception for the duration of the public health crisis.

I plan to focus my testimony today on some of the challenges that the FTC faces in fighting fraud as we enter 2021. Stopping consumer fraud – including the predacious type of fraud we are discussing today – is the “meat and potatoes” of what the FTC does. No other government agency has the broad mandate and jurisdiction to stop the range of frauds that consumers experience every day, let alone the surge that occurs during public emergencies. Although Congress provided the FTC with additional tools to fight COVID-19 until the pandemic is over, the FTC is facing increasing challenges as it seeks to protect consumers from fraud more broadly. My testimony will focus mainly on the FTC’s ability to provide consumers with restitution under Section 13(b) of the FTC Act. I also will briefly address issues related to platforms that enable fraud, underserved communities, and privacy.

## **II. THE FTC’S ABILITY TO PROVIDE CONSUMER RESTITUTION UNDER SECTION 13(b)**

### **A. Background**

As this Committee is aware, the authority of the FTC to obtain restitution under the FTC Act is currently being considered at the Supreme Court, following two adverse rulings by the Third and Seventh Circuits.<sup>6</sup> Without repeating the extensive arguments and record of the Supreme Court proceeding, I am providing a very brief summary of the issue here:

For four decades, the main tool that the FTC has used to return money to consumers (and small businesses) victimized by fraud is Section 13(b) of the FTC Act. This provision states that in “proper cases,” the FTC may go directly to federal court to obtain a permanent injunction. Since

<sup>4</sup> See *Coronavirus (COVID-19) Pandemic: The FTC in Action*, <https://www.ftc.gov/coronavirus>.

<sup>5</sup> See Press Release, *Cantwell-Schakowsky Legislation Cracking Down on COVID-19 Scams Passes Senate and House*, <https://www.commerce.senate.gov/2020/12/cantwell-schakowsky-legislation-cracking-down-on-covid-19-scams-passes-senate-and-house> (December 22, 2020).

<sup>6</sup> See Supreme Court Docket, <https://www.supremecourt.gov/docket/docketfiles/html/public/19-508.html> (last visited February 1, 2021).



this provision was added to the FTC Act in 1973, every circuit court to consider the issue (until recently) held that when issuing a permanent injunction, a court can invoke its equitable authority to provide ancillary equitable relief, including restitution for consumer victims. Notably, Section 13(b) is the *only* provision of the FTC Act that has enabled the FTC to seek, in the same federal action, both an injunction against law violations and restitution for injured consumers.

Using this authority, the FTC has been able to return many billions of dollars wrongly taken from consumers – over \$11 billion in just the last five years.<sup>7</sup> The vast majority of the FTC’s 13(b) cases have involved hardcore fraud. However, some have involved clearly deceptive claims by “legitimate” companies, as was the case in the FTC’s action against Volkswagen for its deceptive emissions claims. In fact, while the FTC developed its case with multiple other government agencies, it was the *FTC’s 13(b) authority* that allowed the agencies to obtain up to \$11 billion dollars for consumer restitution.<sup>8</sup> Importantly, under the statutory interpretation recognized in these cases, the FTC can *seek* restitution under Section 13(b), but the power to *grant* such relief derives from the court’s equitable authority, and it is the court that orders and/or approves this relief.<sup>9</sup>

## B. Consequences for Consumers

The adverse rulings in the Third and Seventh Circuits have already undermined the FTC’s ability to obtain restitution for consumers in those circuits.<sup>10</sup> An adverse ruling by the Supreme Court would be devastating.<sup>11</sup> Section 13(b) is simply the most efficient and effective tool that the

<sup>7</sup> See *FTC Refunds to Consumers*, [https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds\\_15797958402020/RefundsbyCase](https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase) (last visited February 1, 2021).

<sup>8</sup> See Press Release, *Volkswagen to Spend up to \$14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles* (June 28, 2016), <https://www.ftc.gov/news-events/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating>.

<sup>9</sup> See, e.g., *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982). Even when the FTC settles a federal district court action with a defendant, the court must approve it.

<sup>10</sup> See *Letter from FTC Commissioners to House and Senate Commerce Committees*, <https://www.hinchnewman.com/wp-content/uploads/2020/11/2020.10.22-FTC-Letter-Section-13b-of-the-FTC-Act-1.pdf> (October 22, 2020).

<sup>11</sup> Other rulings also limit the FTC’s ability to enjoin and remedy misconduct. See *FTC v. Shire ViroPharma Inc.*, 917 F.3d 147 (3d Cir. 2019) (13(b) relief only available when there are ongoing violations); *Liu v. SEC*, 140 S. Ct. 1936 (2020) (limits amount that can be obtained as equitable restitution). The FTC also lacks authority to impose civil penalties for first-time violations, a problem that is particularly acute in areas where harm can be difficult to prove, such as privacy.

FTC has to stop illegal conduct, prevent defendants from profiting from such conduct, and return money to injured consumers. It contains appropriate safeguards, including evidentiary standards for proving the violations and seeking the requested relief, as well as the requirement that a court must determine whether to grant or deny such relief. The legal arguments about the FTC's authority have mostly focused on the wording of Section 13(b) and its legislative history, not on a judgment that defendants should be able to keep money obtained through wrongdoing, or that consumers should not get their money back. Whatever Congress intended when it wrote Section 13(b), Congress in 2021 can fix this problem.

As recognized throughout the case proceedings, the FTC *does* have alternative ways to obtain restitution for consumers. However, these options are not nearly as effective as Section 13(b). As one option, the FTC can engage in a two-step legal process, first by obtaining an order through administrative adjudication under Section 5 of the FTC Act, and then by seeking restitution in federal district court under Section 19.<sup>12</sup> This approach raises the risk that the money wrongly taken will be long gone, or the victims impossible to locate, by the time redress is distributed, especially since cases that have used this approach have taken many years to resolve. For example, in the FTC's case against Figgie International, the FTC could not distribute redress to consumers until a full *twelve* years after it filed its administrative complaint (eight years after it issued its administrative order) due to the many steps involved.<sup>13</sup> In the FTC's case against the Telebrands Corporation, the FTC could not distribute redress to consumers until *eight* years after the FTC filed its administrative case (five years after it issued its administrative order), a "shorter" wait only because the parties reached a settlement resolving the Section 19 litigation.<sup>14</sup>

As another option, if a defendant has violated a rule enforced by the FTC, the FTC may be able to seek injunctive relief and restitution in one proceeding, just as it has done under Section 13(b). However, not all of the FTC's fraud and deception cases involve rule violations. In fact, many of them – including, for example, the FTC's cases against Volkswagen, for-profit school

---

<sup>12</sup> 15 U.S. Code Section 57b.

<sup>13</sup> See Press Release, *Figgie International, Inc.*, <https://www.ftc.gov/news-events/press-releases/1995/06/figgie-international-inc> (June 9, 1995).

<sup>14</sup> See Press Release, *FTC to Send Refund Checks to Consumers Who Bought Bogus "Ab Force" Weight Loss Devices*, <https://www.ftc.gov/news-events/press-releases/2010/11/ftc-send-refund-checks-consumers-who-bought-bogus-ab-force-weight> (November 18, 2010).

DeVry University,<sup>15</sup> and numerous cases involving phony income schemes, financial aid scams, and bogus disease cures – rely solely on Section 5’s prohibition against “unfair or deceptive” practices. Even in cases involving rule violations, there may be parts of the case that rest only on Section 5, resulting in only partial restitution.

In addition, the FTC could use its inherent rulemaking authority under Section 19 to issue *more* rules covering *more* conduct, thus laying a broader foundation for restitution in future cases. While this remains an option for the FTC, it has serious limitations. For one thing, the rulemaking process set forth in Section 19 is highly complex and elongated<sup>16</sup> – deliberately so, since it was enacted as part of a series of reforms designed to stem perceived regulatory overreach by the FTC in the 1970s.<sup>17</sup> As a result, most rulemakings under these procedures have taken many years – nine in the case of both the Credit Practices and Used Car Rules, for example.<sup>18</sup> For another thing, a rules-focused approach would require the FTC to anticipate and regulate multiple forms of deception and unfairness in advance, an outcome that would be highly regulatory and could be viewed as a reprise of the FTC’s 1970s “overreach.” Nevertheless, in the absence of Congressional action regarding Section 13(b), the FTC should consider undertaking rulemakings in appropriate circumstances – to prohibit clear, discrete, and recurring forms of deception, such as misrepresenting affiliation with the government.

Each of these options provides a path for the FTC to seek consumer restitution but none comes close to compensating for the loss of the FTC’s restitution authority under Section 13(b). And it will be consumers that pay the price. The FTC, already squeezed for resources given its vast mission and relatively small size, will spend more time on each case, bring fewer cases, and find less of consumers’ money at the end of the process. Scammers will keep more of their unjust

<sup>15</sup> See Press Release, *DeVry University Agrees to \$100 Million Settlement with FTC*, <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc> (December 15, 2016).

<sup>16</sup> 15 U.S. Code Section 57a.

<sup>17</sup> Howard Beales, *The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, <https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection> (May 30, 2003).

<sup>18</sup> *Credit Practices Rule*, 40 Fed. Reg. 16,347 (proposed Apr. 11, 1975); 49 Fed. Reg. 7740 (issued Mar. 1, 1984; codified at 16 C.F.R. pt. 444); *Sale of Used Motor Vehicles*, 41 Fed. Reg. 1089 (proposed Jan. 6, 1976); 49 Fed. Reg. 45,692 (issued Nov. 19, 1984, codified at 16 C.F.R. pt. 455).



gains, and consumers will be stuck with their losses. I urge Congress to restore the authority that the FTC's has used to fight fraud for the past forty years.

### III. PLATFORMS THAT ENABLE FRAUD

Fraud does not happen in a bubble. It relies on other entities, individuals, and systems to function, including the platforms and conduits through which scam artists disseminate fraudulent information. Among the warning letters that the FTC sent regarding COVID-19 scams were letters to Voice over Internet Protocol (VoIP) providers and other companies warning them that routing and transmitting illegal robocalls related to COVID-19 is against the law.<sup>19</sup> As the Chair of this Subcommittee has recognized, these platforms and conduits (not just VoIP providers but the tech companies and social networks through which people communicate and sell products and services) play an enormous role in enabling fraud and should bear some responsibility for stopping it too.

Like many enforcement agencies and private litigants, the FTC faces obstacles in holding these entities liable for assisting and facilitating fraud. Among other things, defendants of all stripes argue that they are immune from liability under Section 230 of the Telecommunications Act.<sup>20</sup> Although Section 230 reform is a complex undertaking that is well beyond the scope of this hearing, the Chair's bill from last year – the Inform Consumers Act – is a great step forward (short of wholesale 230 reform) in ensuring platform accountability.

### IV. REACHING DIVERSE COMMUNITIES

Fraud can have a disproportionate effect on certain communities, such as seniors, veterans, African-Americans, and Latinos. As a result, during my tenure as FTC Bureau Director, the FTC created and scaled up an ambitious project called *Every Community*, the goal of which was to

<sup>19</sup> See Press Release, *FTC and FCC Send Joint Letters to Additional VoIP Providers Warning against 'Routing and Transmitting' Illegal Coronavirus-related Robocalls*, <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-fcc-send-joint-letters-additional-voip-providers-warning> (May 20, 2020).

<sup>20</sup> See Press Release, *U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for LeanSpa Weight-loss Supplement*, <https://www.ftc.gov/news-events/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-network> (October 4, 2016) (FTC prevailed against defendant's 230 defenses but only after extensive litigation).

ensure that the agency was reaching and protecting the diverse communities victimized by fraud.<sup>21</sup> The project included consumer surveys, outreach to African American and Latino organizations, engagement with a range of community groups, and data analysis by the FTC's Bureau of Economics. Among the project's findings was that African American and Latino communities experienced fraud at *higher* rates than white communities but reported fraud to the FTC at *lower* rates – in other words, they were underreporting fraud, highlighting a key challenge for the FTC in reaching and protecting these communities. In making these findings, FTC staff had to perform a detailed analysis of fraud and census data, since the Commission's complaint database contained very limited demographic information.

In 2021, the FTC should expand the *Every Community* program, including by collecting more data (with appropriate safeguards) to enable the type of analysis discussed above, and tasking the Bureau of Economics with additional studies of the FTC's reach and effect on different communities. The FTC also should consider hiring experts on racial equity and representation to assist with this important work. Such efforts would be consistent with last week's Executive Order on racial equity and underserved communities.<sup>22</sup>

## V. DATA PRIVACY AND SECURITY

Many issues, including data privacy and security legislation, have necessarily taken a backseat to the exigencies of the pandemic. However, as I discussed in a recent blog posted on the Brookings website,<sup>23</sup> available data suggests that our outdated privacy laws undermined our ability to respond to the pandemic. Indeed, surveys show that American consumers refused to use contact-tracing apps – which could have been helpful in tracking the disease – largely due to privacy concerns. A baseline privacy law placing limits on how these types of apps can collect, use, and share personal data could have bolstered consumer trust and increased consumer use of these apps.

<sup>21</sup> See FTC Report, *Combating Fraud in Latino and African American Communities*, <https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf> (June 15, 2016).

<sup>22</sup> *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (January 20, 2021).

<sup>23</sup> *How Our Outdated Privacy Laws Doomed Contact-Tracing Apps*, <https://www.brookings.edu/blog/techtank/2021/01/28/how-our-outdated-privacy-laws-doomed-contact-tracing-apps/> (January 28, 2021).



This Subcommittee has provided strong leadership on data privacy and security, including by circulating draft legislation and holding hearings on the issue. I hope you will continue to support federal legislation that both establishes a baseline level of protection and strengthens the FTC's ability to deter misconduct and protect consumers.

#### **VI. CONCLUSION**

Thank you for the opportunity to provide my views on fighting COVID-19 scams and other fraud. I stand ready to assist this Subcommittee as it pursues its important work to protect consumers.

Ms. SCHAKOWSKY. Well, thank you so much. The gentlewoman yields back, and let me now—we have concluded the witnesses' opening statements.

At this time we will move to Member questions. Each Member will have 5 minutes to ask a question and get an answer of our witnesses. And I will start by recognizing myself for 5 minutes.

So we certainly have talked a lot about 13(b) and the importance of that. I want to thank Representative Cárdenas for your leadership on this, on addressing this issue. And I want to say that I hope that every single member of this subcommittee can agree that scammers should not get to keep the money that they stole from consumers, which is essentially what would happen if we were to get rid of 13(b).

So, Ms. Patten, I noticed that you filed an amicus brief urging the Supreme Court to uphold the FTC's ability to seek restitution. And as you may know, the attorney general from the State of Illinois, Attorney General Kwame Raoul, has a bipartisan coalition now of 30 State attorneys general who are also filing an amicus brief in support. I wondered if there is anything—I know you spoke about it, but if there is anything else that you want to say that we should know and care about when it comes to protecting this very important tool.

Ms. PATTEN. Yes, thank you, Chair. The amici brief from the States and the District of Columbia made clear that States absolutely need the FTC to have 13(b) authority. States do not have nationwide jurisdiction over these scams. They can't go into foreign countries easily. So if the FTC cannot claw back ill-gotten gains through 13(b), then the States will be required to shift resources over to trying to make victims whole.

One of the things that I thought was so telling in the amici brief was that they said between 2016 and 2019, the FTC returned more than \$10 billion to 9 million consumers in all 50 states, the District of Columbia, and Puerto Rico. And then, if the FTC loses 13(b), you can be guaranteed that consumers in every single State will be faced with more deceptive acts and practices.

Ms. SCHAKOWSKY. Thank you. I wanted to ask Ms. Rich—I am sorry—Mr. Kovacic. Here is a really important question: Is there any point in waiting to see how the Supreme Court rules on the question of 13(b), or should the authority under that—should we deal with it before the Supreme Court?

Mr. KOVACIC. My own intuition would be to wait until the decision comes up. There is the possibility—comes out. There is the possibility that the Court will say, contrary to my prediction, the FTC is doing a great job, that is just what Congress wanted, full speed ahead.

I would be faintly concerned that, if there were a measure introduced and adopted before that, the argument could be made, or the impression given that, oh, my God, Congress didn't think that it had—that the Commission has the authority. So it has got to put in a supporting mechanism right now.

I guess my inclination would be—but you are—you understand the legislative process better than I do, how long it takes and how it goes. My inclination would be to drop that bill as fast as possible, or even now to be ready if there is an adverse decision. But I hope

I am wrong. Maybe the Supreme Court says, “God bless the FTC, full speed ahead.”

Ms. SCHAKOWSKY. So let me ask Ms. Rich or anyone else who wants to weigh in on this. Go ahead.

Ms. RICH. I would love to just state a contrary view, which is that I understand that the FTC already cannot pursue restitution under 13(b) in two circuits. And in other circuits now defendants are saying, “Oh”—dragging their feet, delaying, saying, “You don’t have the authority.” And these are defendants that have wrongly taken money from consumers.

And so the FTC is limited now, and I would encourage Congress to take action now, because it is already a problem. And I, too, have been following the arguments in the Supreme Court, and I am not optimistic. But regardless, it is already a problem.

Ms. SCHAKOWSKY. So, although I am out of time, I am just going to ask Ms. Patten what—yes or no, should we move now, or wait for the Supreme Court?

Ms. PATTEN. I think you should absolutely move now to protect 320 U.S. consumers and honest and fair businesses. They deserve that protection now.

Ms. SCHAKOWSKY. Thank you. Well, this is a very important decision for us to consider as a subcommittee and as a full committee. So we will get to it.

And now I will recognize the ranking member of the committee, Mr. Bilirakis, for 5 minutes—

Mr. BILIRAKIS. Thank you, Chair—

Ms. SCHAKOWSKY [continuing]. For questions.

Mr. BILIRAKIS. Thank you very much, Chair. I appreciate it. I thank the panel for their testimony today, very informative.

Recently, constituents in my district have been targeted by scammers promising COVID-19 vaccinations. I mentioned that in my opening comment. Fake Eventbrite websites masking themselves as health departments, requiring residents to pay fees for appointments to receive the vaccination. This was reported in my local paper, the Tampa Bay Times, recently.

I am glad to hear steps have been taken to remedy this particular situation, but more needs to be done to protect the vulnerable individuals trying to receive the vaccinations. I think most people would agree with that.

Ms. Ponto, how can we better educate individuals on vaccination scams?

And then, should local health departments around the country work with community organizers and law enforcement agencies?

If yes, what should they collaborate on?

I know you mentioned this. I believe you mentioned—you touched on this. Can you elaborate a little more?

Ms. PONTO. Thank you. We have not actually seen a lot of scams in regards to vaccinations and PPEs and other things in our community. Because we are so well based and have our shops, we actually filter a lot of what is happening out there into our shops, and thus into our COPS program.

We do have a health district that is down around our police station, and they are pretty good at educating folks about what is going on and staying up on that population. What I am concerned

about is definitely our elderly, who are sitting at home and isolated and scared and might be more susceptible to that social media or those phone calls and fall prey to this.

Education, again, is the way to go. And for us, it is getting it out there, making our phone calls to our community members. Our neighborhood councils are also very successful at getting out the information, and then getting our city council involved, as well, to get it out. And that is on our level—citywide. Thank you.

Mr. BILIRAKIS. Working with law enforcement, do you recommend that, as well?

Ms. PONTO. I always recommend working with law enforcement, and law enforcement is my background, so I—any way that we can pull them in and work with them and not have them do our work for us is a win-win in my books.

So what does that look like? Not exactly sure, but we are community-oriented policing, and so we kind of are setting in the Nation—we have other cities that come to see our programs, and why it works so well for our city. Volunteers in the community is where it is at, and we get to work alongside with our law enforcement.

Mr. BILIRAKIS. Very good. Thank you.

Ms. PONTO. Thank you.

Mr. BILIRAKIS. Ms. Rich, in your testimony you mentioned the findings of Every Community, an FTC program you worked on, which highlighted that the underserved communities impacted by scams are not reporting them as often as they should. Can you explain why it is important that every scam should be reported?

And then I have a question for Ms. Ponto.

Why should every scam be reported?

Ms. RICH. The FTC really does rely on—it relies on many sources for targeting its law enforcement, but one of the sources is consumer complaints that it receives, and also information it receives from its partner about the complaints they are seeing on the ground.

So if the inputs for—if the agency isn't getting information about the scams that are really hurting consumers, it can't target its enforcement well. And if certain communities aren't comfortable reporting to the FTC or don't know to report to the FTC, the FTC may not be protecting those communities. And research that we did when I was still at the FTC suggests that was the case in some instances.

And so it is very, very important that the FTC do more work to ensure that it is reaching every community that needs its protection, whether through—by itself or through trusted partners, so that it can target its protection efforts effectively.

Mr. BILIRAKIS. I would thank you, Madam Chair. I am going to go ahead and yield back, because my time has expired. But I will submit questions for the record. Thank you.

Ms. SCHAKOWSKY. I now recognize the chair of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Chairwoman Schakowsky. I wanted to ask some questions.

I wanted to use New Jersey, if I could, as an example, because we have had a very aggressive State attorney general who has been trying to go against consumer protection violations. But even

so, since the beginning of the pandemic, we—New Jersey has lost nearly \$9 million in—individuals—in fraud, despite this aggressive enforcement by the attorney general. And that includes—he sent out, like, 1,800 cease-and-desist letters, and at least a dozen enforcement actions.

And, of course, I am proud of the fact that we did a bipartisan initiative at—in the end-of-the-year package to include, you know, this provision that gives the FTC new authority to seek civil penalties for scams and deceptive practices related to COVID. That, I believe, was Jan and Dr. Bucshon’s initiative. And the FTC has issued more than 500 warning letters to sellers of unapproved or misbranded products related to COVID.

So let me just ask quickly, because there is not a lot of time, obviously. Ms. Patten, are warning letters enough to protect consumers from fraud and scams?

Ms. PATTEN. Unfortunately not. I think the one common theme with every scam we are going to talk about today is that they are perpetrated for financial gain. And unless the money is taken out of the pockets of wrongdoers, it will always be in their interest to continue. So a warning letter, regardless of where it comes from, is just not going to deter criminals.

Mr. PALLONE. Well, thank you. So let me ask Ms. Rich, how could the FTC use the new authority from the COVID-19 Consumer Protection Act to fight fraud and scams more effectively?

If you could, quickly. And I hate to say, “quickly,” but—

Ms. RICH. The new law covers a huge amount of scams. It is very broad as to COVID scams. So, if a company engages in any of that activity, it can—the FTC can pursue civil penalties. So, just as Ms. Patten just said, it is very important for deterrence to make it painful for fraudsters to rip off consumers. And so the civil penalty authority—

Mr. PALLONE. All right. Well, let me ask this. You know, I mentioned today about the Supreme Court and the threat to the FTC’s 13(b) authority, you know, restitution. And Tony has a bill to deal with that.

But now that the FTC has this authority to fine companies that have committed fraud and scams related to the pandemic under this new law, why is it still important to ensure that the FTC’s 13(b) authority is preserved? Why is that still important, Ms. Rich?

Ms. RICH. The COVID scams are terrible, but they are one of many frauds that the FTC has to fight all year long, in and out of a pandemic. So, in many of those cases, the FTC doesn’t have civil penalty authority, and its redress authority is under threat. So it is a much broader problem that goes beyond the COVID scams that are occurring here. And so it still needs to be fixed.

Mr. PALLONE. All right. And then, just quickly, on social media for Ms. Patten or Ms. Rich. We know that, you know, the scams on social media have tripled this year, mostly with online shopping. And earlier this week, Jan, myself, Anna Eshoo, Mike Doyle sent a letter to Facebook, Twitter, and Google regarding their handling of COVID vaccine misinformation, and how it has escalated on their platforms. And obviously, I am concerned about that.

So, Ms. Patten, can you talk more about why it is so easy for consumers to be duped by the ads they see on social media?



And then I could ask both of you what are some things that FTC could be doing to help prevent those types of social media scams in the time left.

I will start with Ms. Patten.

Ms. PATTEN. Thank you. Social media is incredibly effective at persuading consumers to believe what they are seeing, because they are following people they believe in or they want to emulate. So it is one of the most effective tools scammers have to be able to get to consumers, because there is honest and trustworthy belief by consumers.

Mr. PALLONE. So what do you suggest, between you and Ms. Rich, about the things the FTC could do to help prevent these scams on social media? Just briefly, if you could.

Ms. PATTEN. I will defer to Ms. Rich.

Ms. RICH. Well, obviously, the FTC should keep doing warning letters and take action wherever possible using its new authority.

But there is a huge role for education here and for the FTC working with the groups that consumers trust to get the word out. People trust information that comes from their community groups, their church, et cetera, their local groups. So the FTC really has to be aggressive about education. I don't know whether the FTC is amplifying its own messages on social media. If not, it should be doing that. And, of course, the FTC should be pressing the platform strongly to take their own action.

But as you know, 230 is a problem in terms of the FTC actually taking action against the platforms.

Mr. PALLONE. Thank you. Thank you, Jan.

Ms. SCHAKOWSKY. Thank you. Now I recognize the ranking member of the full committee, Mrs. Rodgers, for 5 minutes.

Mrs. RODGERS. Thank you, Madam Chair. And before I move to questioning, I just want to emphasize the importance of section 13(b) and the role that it plays and has played and will continue to play in the FTC's consumer protection mission, and especially with the bigger cases.

I think we also need to recognize, as these cases are moving up to the Supreme Court and we are anticipating a decision, as we move forward, due process is a fundamental principle for the protection of Americans' legal rights, and it must be central to any changes to existing law.

If we are to tackle 13(b) authorities, we should also take a holistic view, I believe, of FTC's authorities, and consider other amendments.

We considered FTC process and transparency reforms in the 114th Congress. And I would just recommend them to you, Madam Chair and the other members of this committee, that as we are moving forward looking at FTC roles and responsibilities, that what was put together then be a part of this legislative effort.

With that I would like to start with Ms. Ponto from Spokane, Washington, and just thank you for your excellent testimony today. I thought it was really helpful to be able to hear from somebody who is on the front lines really trying to help so many in our community that are being impacted by various scams.

You know, we are talking a lot about the FTC and its statute and authorities, but I also think it is also important just for us to

better understand, you know, why people are falling for these scams and why they are vulnerable now and how we can improve education to prevent scams and facilitate cooperation among the Federal, State, and local agencies.

So, in that vein, Ms. Ponto, I just wanted you to speak to the type of scams that you are seeing for the most part, whether they are directly tied to COVID, or if other things are also on your radar screen, perhaps a cure scam or a treatment scam. Or are consumers just more vulnerable in general because they are shut in, and are more likely to be tricked by scammers calling their home phone during COVID?

Ms. PONTO. Thank you. Absolutely. With the isolation, and people being locked up in quarantine, that is the number-one complaint that I am seeing coming through our office, is that they are lonely. And these scammers are targeting folks.

I had an elderly lady who bought an iPad, and somehow she got a scammer telling her that he sees 29 hacks on her iPad, and, you know, she is in her 70s and she is thinking, OK, this gentleman is nice, sounds nice, he is going to help me fix this. Broken English accent, you know, but she didn't see those flags.

And basically, long story short, he had her in the car, tripping around to Fred Myers and Target, pulling gift cards, putting 500 to \$1,000 on gift cards, walking her through the process of going through different checks stands, giving him cash. The store manager came up, recognized that she may have been a victim of fraud. She lied to him. She goes, "Crazy, I knew that he was telling me—and I still lied to him."

The scammer stayed on the phone with her while she did all of this, while she drove to the stores, picked up the gift cards, went through the different check stands, went back out to her car, scratched off the numbers, and read the numbers to him. He called her 12 times a day when she wouldn't pick up the phone. He claimed that he got control of her Nest camera, and was able to look into the house because he was concerned for her.

And so, when you are talking about these kinds of things, whether some of this happened or not, it absolutely is scary. The way that it came about was that her daughter was flying up here for the holidays, and the credit card was declined. And as soon as she saw—and Mom didn't tell her daughter, because she was embarrassed. These are stories that we are seeing over and over and over again.

The newest thing now with Washington State auditors, with this big, massive breach that is just coming about, worries me that I am going to have tons of victims in my office that were victims with the Employment Security Department breach we saw this spring.

So we need help. I have got detectives who are having difficult times pulling information for victims, even though the FTC says that, you know, these businesses shall provide this information. It is taking months to get it. And so we need better, thorough, more timely help from the Federal Trade Commission in these areas. Thank you.

Mrs. RODGERS. Thank you. Thanks for what you are doing on the front lines, and joining us today. I yield back.

Ms. SCHAKOWSKY. Those are amazing, amazing stories. Now I am happy to call on my dear friend and fellow Illinoisan and long-time member of this committee, Congressman Bobby Rush.

[Pause.]

Ms. SCHAKOWSKY. Bob, can you unmute?

[Pause.]

Ms. SCHAKOWSKY. Bobby Rush, unmute.

Mr. RUSH. Thank you, Madam Chair. And I am your friend, and we have been friends for decades now. And I certainly enjoy your friendship.

Ms. Rich, the COVID-19 pandemic has exposed the healthcare disparities in our Nation. And parallel to these, to this pandemic, is what I call a consumer protection pandemic that is more long-standing, and that has existed for many multiple decades in our Nation.

In your testimony you mention that the rulings on 13(b) by the Third and Seventh Circuits—and I quote—“have already undermined the FTC’s ability to obtain restitution for consumers.” My district is in the heart of the Seventh Circuit.

And I would ask you if you would please drill down for us and to describe how these rulings have undermined the FTC’s ability to obtain restitution and how has this impacted communities, consumers?

Ms. RICH. Well, I am not at the FTC now, so I don’t have the details of the cases and—that have been stopped or changed because of the rulings.

But when the circuit court says that you can’t get restitution through 13(b), until that is reversed, whether by a miracle at the Supreme Court or by Congress acting, the FTC cannot bring a 13(b) action and in one action both get injunctive relief against law violations—often fraud—and restitution at the same time.

Instead, it has to bring—get—instead it would have to sue that company. And if it wants to get restitution in an administrative action, that takes years at the Commission. And then, when that is done and there is an order, go to court in the Seventh Circuit in your district and seek redress then. In cases where the FTC has used this tool, it is taking years and years. And the money—there is no guarantee the money will be there at the end of it, allowing defendants to keep the money.

The other alternative is that if, there is a rule on the books that the FTC can enforce, then you can go to the Seventh Circuit and seek restitution in the same action where it is stopping the conduct. But many cases the FTC brings don’t involve rule violations. And so that is a problem, as well.

And so you are putting your finger on the very heart of the problem.

Mr. RUSH. Thank you.

Ms. PATTEN, can you please discuss what reforms you think are needed to section 230?

And specifically, why should the Congress exclude commercial speech from the protections section 230 currently affords?

Ms. PATTEN. Thank you. I don’t think that deceptive and false speech that is commercial in nature—and I want to stress commercial speech—should be protected. That is the kind of speech that

is being used to take advantage of susceptible and vulnerable populations, especially during this pandemic, to steal money from them, steal their identities.

And it does more than just economically impact these people. It really goes to, as we have talked about, people's mental health care and the like. And so I just don't think that there should be a law protecting that kind of illegal speech.

Mr. RUSH. Thank you.

Madam Chair, I yield back.

Ms. SCHAKOWSKY. And now—thank you for your questions and answers—and let me now call on everybody's friend and a one-time chairman of this committee, Congressman Upton, for 5 minutes.

Mr. UPTON. Well, thank you, Madam Chair. And it is a very important hearing, and I really appreciate the listening in and participating with all of my colleagues. This is so important, because so often this really does prey on the most vulnerable, those that are our least prepared to deal with something like this.

And, you know, we have seen it on other issues. You know, traditionally the, you know, "I have been kidnapped, please send money to pay my hotel bill" and, you know, it goes to Nigeria and it disappears. But this is even worse, because all of us know about COVID and all of us want a resolve to this issue so that we can get our life back to normal again. And these folks who are preying—with an e-y versus a-y—are so dangerous to our society.

Let me just say a couple of things from Michigan's perspective. We know that there have been already contacting our offices, our State offices, more than—almost 4,600 cases of fraud have already been identified; another almost 2,600 scams; identity theft, almost 1,300; do not call, 331; 5—almost \$6 million total, with an average of \$250 per individual. And the percentage of reports indicating the loss, 44 percent. So a real issue.

I guess my first question is to Mr. Kovacic.

What is your understanding as it relates to section 13(b) and section 19? Are they mutually exclusive? What are your thoughts on that issue?

Mr. KOVACIC. There are complementary mechanisms, but Jessica has underscored the superior quality of section 13(b). It provides, by far, a more effective way of getting the kind of immediate relief, getting a temporary restraining order right away. Freezing assets, making it possible to preserve the possibility for recovery.

The Commission does have other tools. But, in the context we are describing, especially with the urgency that you have just set out, 13(b) is the best mechanism the Commission has to get immediate, effective relief.

But part of what I find disheartening about our conversation is notice how often we have heard the word "crime" and "criminals" mentioned here. My concern is that, if there is not an effective collaborative mechanism between the civil enforcement side and criminal enforcement officials, if that is not a priority, what we have really said is that the worst that will happen to you is you will have to give the money back. And I think the only way to have the real deterrent message here is to take away the freedom of the criminals we have been talking about.

But 13(b), for getting the civil recovery in place, by far superior to the other tools the FTC has.

Mr. UPTON. Well, thank you.

Ms. Ponto, you know, in your previous service in law enforcement before joining the Spokane COPS, how can law enforcement be better equipped to go after scammers?

I know social media is used. I look at my relationship with my law enforcement folks, and they are often the ones that are going knocking on the doors, trying to help individuals who might have been victims of scams. But how did you work and enlist social media to try and bring about the knowledge and education to folks as relates to potential scams in your previous role?

Ms. PONTO. Thank you. Backing up just a little bit, with our department I think it is important to know that, you know, fraud is not necessarily a glamorous crime. Most of our crimes that we investigated that took higher priority are the crimes against persons. And, you know, identity theft and fraud is a property crime.

It also has multiple layers to it. And I know, as a patrol officer, you know, we would hand off to go to domestic violence and big assaults, and you had somebody that was at a Safeway with identity theft. You know, it was like, oh, my God, I am not even sure if I know how to do this. There are so many layers to identity theft and fraud that, when we would take the report, then we would pass it off to the detectives to do the investigations.

Well, about 10 years ago our fraud unit was dissolved. We needed more detectives in different areas of Spokane. And so they kind of farmed out the fraud cases to those detectives that were already carrying a large caseload. And so I think that is detrimental in itself, because we don't have folks that are doing that specifically.

And I see my time is just about up, so—thank you.

Mr. UPTON. Well, thank you.

Ms. SCHAKOWSKY. Thank you, and now I recognize Mr. Cárdenas for 5 minutes of questions.

[No response.]

Ms. SCHAKOWSKY. Did I skip someone? Oh, you know what? Sorry, I am so sorry. Yes, it was a couple of people. Wow. OK, Mr.—oh, no.

Ms. Castor, you are next. Sorry.

Ms. CASTOR. Great. Thanks, Chairwoman Schakowsky. This is a very important hearing.

And let me start by congratulating my good friend and neighbor, Gus Bilirakis. "Ranking Member Bilirakis" has a great ring to it. And I know Representative Soto would agree that, when the Tampa Bay Buccaneers win the Super Bowl this Sunday, it will not be a scam. It may be hard to believe. It may be a miracle. But no scam at issue here.

But this is a really good place for the subcommittee to start, because we are talking about the fundamental authorities of the Federal Trade Commission and whether or not the FTC is really working at its full capacity for our neighbors. And unfortunately, in many cases it is not. And it couldn't be more obvious than during this pandemic, when folks are desperate and they don't know who to trust from day to day.



And, as our witnesses have pointed out, it is just these—the scams are widespread. Unfortunately, the scam artists are all too creative these days. And back home in Tampa I have heard from my neighbors about fake COVID cures, and phony clinical studies, and even the puppy and romance scams. And unfortunately, the FTC has been ineffective because they are required to send these toothless warning letters to lawbreaking companies. And that is just not going to cut it anymore, in my opinion.

So, Ms. Rich, you have been at this for many years. In your testimony you point out that the FTC lacks the authority to impose that first-offense civil penalty. Explain to us how this is harmful to the FTC efforts to go after deceptive companies.

And do you think now it is emboldening companies to proceed with these deceptive practices?

Ms. RICH. Some of my copanelists and many of the Representatives have—the Members have said it is very important to have appropriate remedies to deter wrongdoing and also to, where possible, return money to consumers.

The FTC's first choice of remedy is always to return money to consumers, not penalties. But you can't always return money to consumers. And, as we have been discussing, that authority is under threat. And one of the reasons you can't always return money to consumers is you can't find the consumers, there is not enough to implement a meaningful redress program, et cetera.

So, in some instances, civil penalty authority is better than redress authority and—for example, in many of these types of scams where it is against a small, fly-by-night company. So the FTC needs all of these monetary remedies in order to provide meaningful deterrents. And it lacks them in, you know, across a lot of its programs.

Ms. CASTOR. And, Ms. Patten, do you agree?

Ms. PATTEN. Absolutely. I think we can look at the Amazon case that we have mentioned earlier. To think that this giant company that makes billions of dollars every year had to steal \$60 million of tips from its drivers, and all the FTC could do in that case was get the money back, they couldn't penalize Amazon. And I just think that is crazy, it is outrageous. And I think that Amazon absolutely deserves a penalty.

Ms. CASTOR. Well, I think it is clear that, especially with the evolution of the online platforms, these scam artists are just—the scams have accelerated, the online platforms have facilitated it, and I think this committee will have an obligation to modernize the FTC and address the first-offense civil penalties and the ability to use and reinforce section 13(b) going forward. So I will look forward to working with all of my colleagues here to do just that.

And thanks, and I yield back.

Ms. SCHAKOWSKY. Thank you. And now I recognize Mr. Latta for 5 minutes of questions.

Mr. LATTA. Well, I thank the chair, and also for our witnesses today who are appearing for us virtually.

Before I begin with my questions, I would like to briefly touch on how important access to the WHOIS information is to this discussion. In short, WHOIS information is like the public lands records for the Internet. It tells us who is responsible for doing a

domain name or an IP address. This data can be incredibly helpful for Federal agencies and law enforcement when investigating crimes, and even consumer scams.

Unfortunately, due to an overly broad interpretation of the European Union's General Data Protection Regulation, the GDPR, WHOIS information is no longer made widely available for public access.

Last year I sent a letter to the Federal Trade Commission asking how they use WHOIS to stop consumer fraud related to COVID-19. The FTC made it clear in their response that, since the implementation of GDPR, they can no longer quickly and easily obtain the information they need to combat fraud. This has been particularly harmful during the COVID-19 pandemic as the FTC works to monitor the marketplace for unsubstantiated health claims, robocall scams, and other deceptive practices.

To effectively combat consumer scams, we need to develop a solution that allows our Federal agencies to access WHOIS. I appreciate that the Internet Corporation for Assignment of Names and Numbers, ICANN, recognizes the importance of WHOIS and is working to find a pathway that provides this data for legitimate, lawful needs. But it is taking far too long to make this information accessible.

As we discuss COVID-19 scams today, I ask my colleagues on this committee to consider how helpful WHOIS information would be to stop criminal schemes and to work with me to fix this issue.

I ask the chair unanimous consent to enter into the record the written response I received from the FTC on July the 30th of 2020.

[No response.]

Mr. LATTA. Getting to the questions, through the course of the pandemic scammers have preyed upon Americans' concerns about the COVID-19 virus. We have seen this through phone calls, social media posts, phishing schemes, and counterfeit products. Senior citizens, especially those in Ohio, were hit hard by these scams. And in just a short period of time, 578 scams targeted individuals 60 and older.

Most recently in my district, county health departments have been warning citizens of scammers pretending to be health department officials. These bad actors are telling residents about coronavirus test results, contact tracing, and vaccine scheduling and asking for personal information such as credit card numbers and Social Security numbers.

So, Ms. Ponto, if I could start my first question with you, again, while we know that the FTC is taking action against many scammers who are using the pandemic to defraud consumers, how are law enforcement agencies taking action at the local level?

And how can we better—again, I know you brought it up a couple of times, but how can we better educate our consumers, especially our seniors, to identify these potential scams?

Ms. PONTO. Thank you. Before COVID we were able to do a lot of our tablings. We had town hall meetings. Now we do everything by Zoom, much like what we are doing here today. We are still getting that information out in those forums. We divvy that information out to our neighborhood council, to our city councils who have their own social media platforms.

Our COPS program is very good. Again, we are all situated in the different neighborhoods. And a lot of that comes filtered through our COPS shops. We have pamphlets, we do the brochures. And we are able to talk to people on the phone. We have all kinds of elderly folks who give us a call to confirm that the, you know, “The police organization is giving us a call, and they want money for their emergency fund. Is this a scam, or do I give them money?” You know, and we are able to talk them through these things.

We will continue to educate in these different platforms the best that we can. But really, the COPS shop is a great alternative for being right there in the neighborhood and serving that liaison between the police department and the community.

Mr. LATTA. Also your testimony, you talk about the unemployment scams and that a lot of people don’t realize their information is being used for fraudulent unemployment claims until much later. Are there systems in place to help these individuals to sort of protect their information and recover from this theft?

Ms. PONTO. At this time I do not believe so, but I am not confident on that.

Mr. LATTA. OK. Well, thank you very much.

And Madam Chair, my time is expired, and I yield back.

Ms. SCHAKOWSKY. I thank the gentleman. And next we have Congressman McNerney for 5 minutes of questions.

Mr. MCNERNEY. Well, I thank the chair for holding this hearing, and the ranking member. Good luck with the Buccaneers this Sunday, Gus, but I don’t think you are going to win it.

Say, I want to thank the witnesses. Your testimony has been very stark and effective, and it will motivate us, I think, into action. So it is a very good hearing in that regard.

As already noted here, we have seen a sharp increase during the pandemic in scammers targeting unemployment benefits. And in recent years we have also seen numerous data breaches where consumers’ personal information was stolen.

Ms. Rich, how do you—how do these pervasive data breaches increase the risks that consumers’ information can be used to target the consumers later on, like going out to their unemployment benefits?

Ms. RICH. The data breaches are very harmful. The whole purpose of a data breach, it is usually to steal consumers’ information so it can be used to rip them off at later times. If they don’t get financial information enough to directly defraud consumers, they can use the information they obtain for phishing. You know, they know something about the consumer, so they can then send them emails that look authentic, come from some place the consumer is expecting to get an email, and then get more information from them. So data breaches are very harmful, and that is an area where I am hopeful Congress will act to give the FTC more authority to take action.

Mr. MCNERNEY. Good, that is a great segue to my next question to you, Ms. Rich. What additional tools and resources does the Federal Trade Commission need to help stop these breaches from happening in the first place?

Ms. RICH. A special law authorizing the FTC, in particular, not just to address breaches but to address the underlying core security

that causes these breaches. And it would be very important to give the FTC first civil penalties for first violations as part of this law, which has been discussed it lacks. And as Professor Kovacic discussed, to fill in some of the gaps in jurisdiction that the FTC has—for example, common carriers, telecom companies, and non-profits. So that is an area that Congress can really make a difference.

Mr. MCNERNEY. Well, thank you. I am also concerned that, once consumers fall victim to identity theft, they aren't getting the help they need to clean up their data and prevent the same thing from happening repeatedly to them. Ms. Rich, do you think more cooperation is needed from all stakeholders involved in helping consumers in such cases, including consumer reporting agencies?

Ms. RICH. Yes, it is a real problem, as Ms. Ponto discussed. I think she talked about local police not necessarily taking the action they need to on—to follow up on identity theft schemes. So it involves the credit reporting agencies, it involves the FTC referring complaints, and it involves local law enforcement. And they all really need to step up.

Mr. MCNERNEY. Thank you. Well, my district includes the city of Stockton, California. It is perhaps the most racially and ethnically diverse city in the country. So it also has a large low-income population. Many folks are just struggling to put food on the table and pay their bills.

Ms. Rich, do you think more outreach needs to be done to help consumers who fall victim to identity theft in communities like Stockton?

And what could the FTC be doing to help, to be more helpful?

Ms. RICH. The FTC's strategy has been to try to partner with trusted sources of information in various—but I don't know how successful it has been in your community. I don't know whether FTC has been able to invest the resources it needs to really reach out and partner with those communities. But that is the strategy I know it has tried to use, and it even encourages local enforcement to rebrand FTC materials so that they can be trusted materials. So that is a very important thing the FTC needs to continue to do.

Mr. MCNERNEY. Well, my last comment is about price gouging. Many of my constituents have raised concerns about price gouging during the pandemic. I am sure everyone on the dais has had the same issue. I think it is important that we pass strong Federal legislation like H.R. 675 to protect consumers against these practices.

Thank you, and I yield back.

Ms. SCHAKOWSKY. The gentleman yields back, and now I call on Mr. Guthrie.

Mr. GUTHRIE. Thank you. Thank you, Madam Chair, I really appreciate you and Republican Leader Bilirakis for holding this hearing, and thank all the witnesses for their testimony.

Since the COVID-19 pandemic began nearly a year ago, deceptive marketing, counterfeit products, and scammers targeting America's most vulnerable have been on the rise.

In order to help protect Americans and stop this trend, I introduced my bill, the Safeguarding Therapeutics Act, working with our former colleague, Eliot Engel. I hope he is doing well. It was signed into law last month. This legislation gives the FDA the au-

thority to seize and destroy counterfeit medical devices and products such as counterfeit vaccines and other combination devices that could harm patients. So proud that that was work signed before—last session.

So my question, starting with Ms. Patten, in your testimony you mentioned multiple misleading health products, such as unapproved treatments and cures for the coronavirus that are continually advertised to susceptible populations around—across the country. So my question is, how is that truthinadvertising.org—how does it successfully work with businesses and government agencies to combat fraudulent marketing schemes, to protect these consumers from these harmful products, and what resources are available to help consumers identify these products?

Ms. PATTEN. Thank you. So one of our goals is to always get information to consumers as quickly as possible. So we immediately put things on our website, TINA.org, and on social media platforms to try and educate consumers about inappropriate health products.

Moreover, when we do find a company that is violating the law, FTC law, we will immediately contact the company and ask them to stop it. Sometimes we find that we are educating the uneducated and that they just don't know better. And, in other instances, where we are either ignored or we feel that they have not done a good job, we will not hesitate to go to State and Federal agencies to try and stop the inappropriate health claims from being marketed.

Mr. GUTHRIE. OK, thanks. And does TINA have—TINA.org have the resources to help these consumers?

Ms. PATTEN. We try and do as much as we can. We are a small organization. But we have thousands of posts on our website, a lot of them dealing with the wellness industry and inappropriate health claims. And we try and guide consumers to where they can get help at the local, State, and Federal level when appropriate.

Mr. GUTHRIE. OK, thank you very much. And now I will switch to Ms. Ponto.

Can you explain how your organization assists victims of scams?

And do you direct victims to file complaints with the FTC or any law enforcement agencies?

And if so, can you walk us through the process once a report is filed?

Ms. PONTO. Yes, absolutely. Thank you. So we end up getting—well, we have been in a proactive, active manner. We have this vehicle, prowling victim callbacks, where we get these daily reports from the police department that talk about victims who have been prowled, maybe their purse was stolen, maybe credit cards were stolen. Our COPS shops do these callbacks, and so we are very proactive.

We reach out to the folks and find out, “Do you have any personal identification in there at all that would lead to identity theft?” If they do, we have been following this recovery plan very well. This is a wonderful source of information for us.

One thing that I did notice, though, is some of these larger banks and corporations, when they are talking to—the victims usually go to their bank first to say, “Hey, I am a victim of fraud” to see what they need to do next—the banks have been pretty good about start-



ing that fraud alert. And that is what we would say, is let's go and get a fraud alert started for you.

The larger banks are not—I am not hearing anyone that says from the larger banks are telling them to go to the FTC and file a report. And that is really odd to me. We do. I ask them—you know, this might be a new phone number that they don't have, or at least update the phone number that is most currently used. But we got to get it in there, because, just like report writing, if it is not down in a report, it didn't happen.

And so we need all of these to go through the FTC, just so that you have that information, and that you can get it out there to other—

Mr. GUTHRIE. Great. Thank you to both of you. My time is about—

Ms. PONTO [continuing]. Social Security numbers, we point them in that direction there, and start really following this bible right here, as far as helping our victims.

So thank you for this, this is a beautiful piece of work. I have it framed in my office.

Mr. GUTHRIE. Well, thank you. My time is expired. I appreciate your answers, and I yield back.

Ms. SCHAKOWSKY. I thank the gentleman, and now I recognize Mr. Cárdenas for his 5 minutes.

Mr. CÁRDENAS. Thank you very much, and thank you, Traci, for expressing how you put your heart and soul into your work and for framing that document.

It is very concerning to me that we hear these stories over and over, and during the worst pandemic we have seen in over 100 years. It appears that over hundreds of millions of dollars have been stolen from Americans, and it is very important for us to understand that this is not a nebulous thing. This is going on every day and affecting the most vulnerable people in our community.

For example, grandparents being told that their Social Security payments will be withheld if they don't make an urgent payment. They are your neighbor who is struggling to get consistent work because of the pandemic, and they have lost their job, and they fall into this fraudulent investment coaching scam.

For years, the FTC has sent a strong message to people who would prey on consumers to make money off of people illegally. And the message is simply this: You will face consequences, and you will be held accountable, and you will pay. Now, more than ever, it is critical that we ensure that the FTC has the tools it needs to continue doing its job and protecting American consumers.

Jessica—I am sorry, Ms. Rich, during the past year consumers reported losing more than \$300 million to fraudulent activities related to the pandemic. In general, how often is the FTC able to recover money lost to fraud and scams?

Ms. RICH. I don't know that I could put a particular number on it, but whenever the FTC takes actions its goal is to get money back for consumers. That is the top priority, which is why this, the 13(b) threat, is so urgent and why I am sure everybody at the FTC watching this hearing right now is very thankful to you for taking the leadership to try to solve that issue.

But that is the top goal. Frequently the money is gone, and that will be more and more the case if this authority goes away.

Mr. CÁRDENAS. Thank you. Yes, 13(b) is critical, and I hope that we can legislatively put that right once and for all.

Is it fair to say that bad actors who are taking advantage of people with these schemes related to the pandemic would be emboldened should the FTC lose its power to return the money back to the American people when they have been scammed?

Ms. RICH. They already are. And, as I mentioned, the FTC can't pursue this relief in two circuits already, and others are watching that and saying, "Oh, look, the Supreme Court may take this authority away, let's delay" or "Let's not pay."

And, as we also discussed, the FTC lacks civil penalty authority in many cases. And so, between the two of those, it is going to embolden fraudsters a lot.

Mr. CÁRDENAS. Thank you.

Bill, Mr. Kovacic, as a former small business owner myself, I know that it is even—it is hard to run a business, even in the best of times. The overwhelming majority of small business owners are honest Americans who want to do things the right way. How are small businesses who are playing by the rules harmed when they have to compete in a marketplace with actors who break the rules and who are not brought to justice?

Why is section 13(b) so important to the FTC's work to make sure that we have a fair playing field out there?

Mr. KOVACIC. I think, as we are all painfully aware, the businesses you are talking about already are suffering a horrible period of distress, and there is a good question about how many of them will survive this process.

In your own district, how many small businesses that were fully operational 12 months ago will be operational 12 months hence? And my guess is the denominator is a lot bigger than the numerator there.

You add to that the additional concern that, you know, I play by the rules, I pay my employees fairly, I give my customers a fair deal. I think one of the most damaging things is that, when you have the bad guys—and again, these are cynical, bad guys—it gives the sense that the whole neighborhood of commerce is corrupt. It creates a sense of doubt about the legitimacy of other transactions. That is, if I am the hardworking small businessman that you describe, how do I persuade people that I am clean?

So one taint of this process is that it raises questions about the legitimacy of the entire market system. But the other is that it—again, it damages the individuals in the short term in that it diverts trade away from people who are playing by the rules. So it is—in addition to this horrible scourge that small businesses face, now you see a diversion of trade away, you see a loss of confidence, and you see the possibility that people just don't trust the market.

Mr. CÁRDENAS. Thank you, Mr. Kovacic. My time has expired.

And we are a country of laws. And the FTC needs to be able to do its part. And hopefully we, as Congress, will restore that, clearly.

Thank you so much, I yield back the balance of my time. Thank you, Madam Chair.

Ms. SCHAKOWSKY. Thank you. Thank you. And now I want to welcome Mr. Bucshon for his time and just say we were able to pass at least a first step, the COVID-19 Consumer Protection Act. But, obviously, we have learned today we have to do much more. So, Mr. Bucshon, it is yours.

Mr. BUCSHON. Thank you, Chair Schakowsky, for holding this very important hearing. And it is—I think sometimes you have hearings in Congress that don't get a lot of media attention. I hope this one does, because the level of scams that are out there has probably grown exponentially during COVID-19, shamefully, unfortunately. So this is an important hearing.

I was proud to work alongside you, Chair Schakowsky, to help introduce and include the COVID-19 Consumer Protection Act in the end-of-the-year funding bill to put real teeth behind the FTC's enforcement efforts in combating COVID-19 scams by allowing them to seek civil penalties for first-time offenders throughout the duration of the pandemic. But as you mentioned, this is the tip of the iceberg of the work that we need to do.

But I also believe that promoting education and awareness of these scams is critical in reducing harm to Americans. A lot of people, particularly seniors, just aren't well aware of these scams. My mother is 80, and I can tell you that she calls me all the time and says, "Hey, I got this call" or "I got this email."

And I am like, "Mother, that is a scam." So this is real, and it hits home for everyone.

I also know, as a surgeon, that using appropriate and approved medical equipment is critical in achieving positive outcomes during the pandemic for both patients and healthcare providers. So I am going to focus a little bit on that.

Ms. Ponto, have warnings of fraudulent personal protective equipment obtained in scams been part of the Spokane COPS community outreach when promoting the proper usage of various personal protective equipment?

Ms. PONTO. Thank you. To be honest with you, we are not seeing a large number of fraudulent vaccinations, or remedies, or personal protective devices. We are not seeing that really in the Spokane area too much.

Mr. BUCSHON. Well, that is good to hear, because across the country, you know, this has been a pretty substantial problem, where products that are supposed to be protective are not. Or, as you mentioned, now we are seeing fraudulent vaccines and other things as it relates to COVID-19.

As you mentioned earlier in this hearing, falling victim to a scam also causes serious mental health concerns, and victims may be too embarrassed to admit they were scammed. And I know that is true. They won't even admit it to family members. As I mentioned, my mother, she was a victim of a scam. And fortunately, it wasn't that significant. But she—I didn't know about it until I went to her house, and I am like—and I won't get in detail, but I am like, "Well, how did—where did you get this thing?"

"Well, somebody called me." So I know that. And, you know, she was embarrassed, and also it causes mental health concerns.

Can you speak to some of the issues you have seen and how we can best address providing support in this area for victims?

Ms. PONTO. You know, we really need to be stepping up as communities and taking care of our elderly population. You know, a lot of the folks, you know, especially in their 70s, 80s, they don't have WiFi, they don't have laptops, they don't have smartphones. And so they really are feeling the isolation. They might get something in the mail. And, you know, these folks have good hearts, they want to send money to these different agencies to help, you know, support whatever mission they are on. And so it is more difficult.

And I almost think that it falls heavily on family members being educated and having those hard conversations with their mothers and their fathers. We don't want to disrespect our mothers and fathers, you know. We want to have them keep their independence. We do not want them to feel foolish and those things. So it really is important that our adult children really do that follow-up and get that information to their mothers and fathers.

Churches—churches is another great forum because a lot of this population do go to their local churches, town halls, senior community centers, places like that, places that they go and frequent, assisted living centers. So those are areas that would benefit from brochures and education.

Mr. BUCSHON. Ms. Patten, do you have any comments on that, or anyone else on the panel want to comment on this—the PPE situation, where the fraudulent—stuff related specifically to COVID, and what you are seeing and what we can do.

Ms. PATTEN. Yes, TINA.org has received numerous complaints from consumers that have ordered PPE on the Internet and failed to get it.

We have also seen many advertisers putting the FDA logo or saying that they are FDA approved, when obviously that is not the case, on Amazon and eBay. So it has been a huge issue.

Mr. BUCSHON. OK, well, I am out of time, so I will yield back. Thank you, Chair Schakowsky.

Ms. SCHAKOWSKY. Thank you. I think Congresswoman Dingell is not back yet. I am going to move on, then, to my Illinois sister, Congresswoman Robin Kelly, for 5 minutes.

Ms. KELLY. Thank you so much, Madam Chair, and welcome to the ranking member. As much as I love Kathy Castor, I say ABB, Anybody But Brady, on Sunday. But anyway, thank you to the witnesses.

The coronavirus pandemic has been ripe territory for scammers, as we all know. Criminals have taken advantage and have profited from confusion and hardship. Seniors, in particular, have been targeted during this pandemic.

Ms. Patten, many seniors struggle with technology and lack of digital literacy skills. Due to the coronavirus pandemic, many are now having to rely on the Internet more than ever, including for booking COVID-19 vaccine appointments. In some States vaccine appointments need to be booked online, leaving those who can't navigate the Internet at risk of falling prey to fake vaccine appointment websites.

Have you seen seniors targeted during the pandemic?

And what did they keep in mind to guard against falling victim to a scam?

Ms. PATTEN. Absolutely. I mean, I don't think it is a coincidence that one of the largest scams that seniors fall victim to is tech support scams, right, on the computer, because they do struggle. So it has been a huge issue. And, you know, it is hard to stop.

I think that seniors also are primarily scammed using the telephone. And while there is an ability for local, State, and Federal agencies to find scams on the Internet or in print, it is much harder when the scam is perpetrated over the telephone. So it is a huge issue, and I know one that is being examined by agencies at every governmental level.

Ms. KELLY. Thank you. Ms. Rich. When you were the bureau director, you created the Every Community program to ensure the FTC was reaching a diverse set of communities. What were the major—and what were the obstacles you ran—

[Audio malfunction.]

Ms. RICH. Well, it was an incredibly important program, and we had ambitious plans for it. It was not only outreach to different communities, but research to see how successful we were doing in reaching out to different communities, and enforcement to make sure that—enforcement in the areas where we saw problems.

And one of the challenges we have—in the data that we did collect at the time, it turned out that certain populations, specifically African-American and Latino populations, were disproportionately targeted by fraud but were underreporting fraud, that weren't reporting fraud in as great numbers to the FTC, showing that the FTC was not capturing the complaints it needed, and had a lot more work to do.

I am—I don't know exactly what the agency has been doing since I left. I know in their outreach that they do a lot to reach out to different communities. But I think this program really needs to be scaled up now with additional research, with more resources devoted to this, to making sure that all these communities are represented and with everybody at the agency working on this goal.

Ms. KELLY. And how do you think the FTC should prioritize its resources toward combating scams?

I mean, you know, there are so many different ones targeted toward consumers.

Ms. RICH. I would say, based on past experience—I don't have access to the details now—that the fraud program is at least 50 percent of what the FTC does, between its headquarters and regional offices. And, given the pervasiveness of scams, I think that is appropriate that it be such a large program. And it should continue to invest those kind of resources.

Ms. KELLY. Thank you so much.

I want to let my colleagues know that I have reintroduced the bipartisan Protecting Seniors from Emergency Scams Act, and I hope my colleagues will join me as cosponsoring this very important legislation to protect seniors.

So thank you so much, and I yield back, Madam Chair.

Ms. SCHAKOWSKY. Is Mr. Dunn here?

[No response.]

Ms. SCHAKOWSKY. No? Give me a signal if you are. Otherwise, I am going to move on to Representative Lesko for 5 minutes.

[No response.]



Ms. SCHAKOWSKY. Representative Lesko, are you here?

Dunn, are you here?

OK, you are recognized. You are recognized for 5 minutes.

[No response.]

Ms. SCHAKOWSKY. Unmute, unmute.

[No response.]

Mr. DUNN. Is that to me, or to Representative Lesko?

Ms. SCHAKOWSKY. No, it is—no, if you are there, Mr. Dunn, and that is you—

Mr. DUNN. Oh, OK, I am sorry. I thought you—

Ms. SCHAKOWSKY. You got recognized. OK.

Mr. DUNN. I apologize. Thank you, Madam Chair. I am grateful that we are here today discussing this important topic of fighting back against the scams and frauds during the COVID-19.

What is new is the fraud now carries a new risk, not just a financial toll but an increased potential for damage to their health and well-being, as well. For that reason, this is more important than ever.

I am particularly concerned with scams targeted towards veterans, seniors, and those living in rural communities like the ones I represent in Florida's 2nd congressional district. To date we have seen a commendable effort by our local partners, who are raising awareness and preventing these scams.

Ms. PATTEN, during the COVID-19 pandemic we have seen a lot of groups impacted. Specifically, though, I am concerned right in this question about our military veterans. And can you speak toward the work that TINA.org is doing with groups to represent those communities?

Ms. PATTEN. Right. Well, TINA.org provides a platform for consumers to come to complain to us about issues. And we have received multiple complaints from military veterans that have been finding products, especially wellness products, supplements that are claiming to either prevent, cure, or mitigate the symptoms of COVID-19.

And I should note that one of the issues we are finding is that the supplements and the products, they are not new. What is new is the marketing. There is—they pivoted. So before, they were targeting military veterans with these same products, saying they could cure, prevent, or treat PTSD. And now they are COVID cures and—

Mr. DUNN. What remedies do the military—are you directing our veterans, the military, towards particular remedies?

Ms. PATTEN. Right. So on TINA.org we have listed State, Federal, and local agencies that they can complain to and share their issues with.

Mr. DUNN. Thanks so very much.

Ms. Ponto, our local law enforcement has been a very valuable resource in terms of education on scams, especially for frauds that originate outside our region. What helpful tools can Congress provide—you or whoever—in order to help local law enforcement on scams that originate remotely?

Ms. Ponto. You know, one of the things, when I was talking to a detective about fraud investigations, is that she is having a difficult time getting this information for investigations. And it would

be helpful if, when the time comes, Federal Trade Commission could step up or step in and help get that information to our law enforcement so they can look at getting convictions, and maybe, you know, put somebody in jail over this.

They are very good, too, about getting the education out there. Most of the education for identity theft and fraud really does come from our COPS shops. We get a lot of referrals, and we are able to walk them through this process of reporting plus provide them with brochures and just firsthand knowledge. I think they like talking to a live person, versus having something in their hand at times and reading something online. So we provide that.

Mr. DUNN. So I thank you, I thank you specifically for bringing in the role of the shops, who have been very helpful, honestly, in our community on that, as well.

Ms. Patten, once again, the pandemic certainly has created isolation for so many people that used to get their advice and kind of guidance from their friends and their workplaces, community events, churches, et cetera. Could you walk us through some of the details of how your organization reaches the people in more rural communities in our current situation of isolation?

Ms. PATTEN. Right. So I think it is important that you have to reach consumers where they are, and where they are now is social media. So TINA.org is very active on Facebook. We actually take out ads to warn consumers about scams and schemes that are on Facebook or on the Internet. And we also are very active on Twitter to try and educate consumers, and get the word out as much as possible.

Mr. DUNN. Thank you for that comment. I see my time has expired.

I too see a face of the social media out there in the rural communities.

Thank you, Madam Chair. I yield back.

Ms. SCHAKOWSKY. Thank you. I am—you may have noticed, the witnesses, that we are in and out. That is because votes are happening.

Is Mr. Pallone here to—I am—OK, Frank, I am going to announce the next person. I think Debbie Dingell is not back.

So, Congressman Soto, you are next.

And Frank, I am going to go vote.

Mr. PALLONE. OK.

Ms. SCHAKOWSKY. Thank you.

Mr. SOTO. Thank you, Madam Chair. We all understand that American families are in crisis. They are losing loved ones, losing their jobs and small businesses, facing home insecurity and food insecurity. So it is understandable that they are desperate for solutions to these problems that they face, which makes them more vulnerable to scams. COVID-19 scams kick people while they are down. And we must put an end to this scamster carnival barkery that runs rampant throughout the United States.

According to the Florida attorney general office, we have seen several rampant themes of scams. Common COVID scams in Florida include unsubstantiated disinfectant claims; treatment, vaccine, and cure false claims; sham at-home testing kits; Federal stimulus scams; fraudulent products; charity scams; unsolicited calls, texts,

and emails; and phone solicitations. The latest scams in Florida, as of this January, are vaccination scams, suspicious texts or emails claiming to have info about the vaccine in exchange for personal information. This is disgraceful.

So the question becomes, how can we protect consumers without penalties, without restitution for victims? This would render the FTC a toothless tiger feared by no one, and leaving scammed consumers defenseless. It is clear we have to act on 13(b) to ensure that the FTC can continue to obtain restitution for victims.

Ms. PATTEN, we recently passed in December the COVID-19 Consumer Protection Act. My question to you is, is this being sufficiently used already by the FTC?

Do you anticipate gaps in this law, realizing it just was passed?

Ms. PATTEN. To my knowledge, the FTC has not yet used that act, but that is the only information I know, that there is no public—on their website.

It does have gaps. It does—you cannot target work-from-home scams using this, because it is really focused primarily on government benefit scams and healthcare scams.

But what I would say is that, while it is absolutely critical to have an act like this at this time during the pandemic, I would warn you that it doesn't provide for coverage for the next disaster, for the next earthquake, for the next fire, what have you. There aren't—unfortunately, will always be a segment of our population that is in a devastating event. And so I think that legislation is necessary that covers all such events, and not just focused on the pandemic.

Mr. SOTO. Thank you, Ms. Patten. And I hope the FTC is on notice we want them to start utilizing this act, and we are certainly paying attention, and thank you for your comments on additional ways we could fill these gaps.

Mr. Kovacic, you have called upon, in your initial statement, a billion dollars for the FTC budget. If we were able to secure these funds, what important items do you think the funding should be used for to protect consumers?

Mr. KOVACIC. I think we can go through the list of items that have been mentioned.

One is a major expansion of law enforcement. That is, bring more cases, bring more visible cases.

Second, much deeper collaboration, as I have mentioned before, with criminal enforcement authorities to build the criminal cases. I think we would have a much greater raising of public awareness, certainly among wrongdoers, who are geographically mobile, they are technologically proficient, they understand gaps in the law, and they have been building experience, going from one scam to another. So bring visible criminal prosecutions, and spend money on that.

I would spend money on the outreach effort that we have been referring to, to build better networks with a collection of government and nongovernment institutions to develop the capacity to analyze complaints in real time, and target attention on vulnerable communities.

I would spend the money to learn more about how commerce and fraud take place in historically disadvantaged communities.

I would spend the money on doing the better public education that we have been speaking with (sic).

I would spend the money on building better networks with public and nongovernment organizations, civic organizations.

I would spend the money on the capital investment to build up the technological capacity to analyze and build databases and use them effectively.

That would be my short list of what to do. And I would think ahead about the moment when we are going to have new privacy legislation. The FTC is being asked to bring big cases against big tech companies across the board. None of this is cheap to do. This is how I would use my billion dollars.

And, of course, were I in your position, I would say, "I am going to come back regularly to see what the return is to this kind of effort." But notice how many times you have been saying in the past 2 hours plus: "We are going to do more. More outreach, more education, more cases, more, more, more." It costs.

Mr. SOTO. Thank you, Mr. Kovacic. My time has expired.

Mr. PALLONE [presiding]. OK, I thank you, Mr. Soto. We now go to the gentleman from Indiana, Mr. Pence, recognized for 5 minutes.

[No response.]

Mr. PALLONE. Greg, you have got to unmute, I think.

[No response.]

Mr. PALLONE. Mr. Pence?

Mr. PENCE. All right, I apologize. I always—

Mr. PALLONE. Oh, that is all right.

Mr. PENCE [continuing]. Everybody when they do that.

Mr. PALLONE. Start the clock.

Mr. PENCE. Sorry about that.

Chair Schakowsky and Ranking Member Bilirakis, thanks for calling this meeting today. Thank you to the witnesses. It has been very interesting listening to you today. Thanks for coming here to engage on the topic of COVID frauds and scams, which we have heard a lot about and we have all experienced a lot about.

From fake stimulus checks to phony pet adoption sites, scammers are seizing the opportunities during the pandemic to prey on vulnerable Americans. Like Congressman Bucshon, my mother and stepfather have had the same problems. Thank God they call us and ask us first. Not everybody has that opportunity or that luxury.

Unfortunately, many Hoosiers are not immune from these scams. Over the past year alone, Indiana has reported almost 4,400 scams to the FTC, accounting for an estimated loss of \$1.9 million.

Many of the fraud schemes have shadowed the evolution of the COVID-19 response. In April, hospitals in my district raised the issue many times of nontraditional medical suppliers engaging in deceptive price gouging of scarce PPEs, as much as \$50 sometimes for some of that equipment.

Then, with the passage of the CARES Act, scammers took advantage of critical relief intended for individuals and families. Now we are seeing fraudulent claims around vaccine distribution all over the country. But recently, the Indiana Governor highlighted how

pandemic unemployment relief programs in the State have become a target of fraudsters and scammers.

Similar to the situation you highlighted in your testimony, Ms. Ponto, criminals are gathering personal information from websites and social media to apply for benefits in their victims' names. I think we talked about the IRS dollars showing up on some people's returns. The State uncovered a fake website scam that closely mimicked the Indiana Department of Workforce Development webpage to trick individuals into giving up their information for unemployment. Not only does this result in a loss of resources for the State, it is creating significant delays in the ongoing verification process for Hoosiers out of work and seeking that assistance as quickly as they can get it.

Ms. Ponto, have you seen this type of scam increase?

And how would you recommend we stay ahead of the curve to prepare for these schemes so that Hoosier relief programs are not obstructed or delayed?

Ms. PONTON. Thank you. I did. This spring, when it first came about, I got hit hard with companies—I mean universities and companies, not individuals—that got hacked over this unemployment security department scam. And I don't know what the question is. That should have been very secure, in my opinion. The Department of Corrections was struck. That is a huge entity.

So I am not sure what the answer is. I just know that we all have a role to play, and we have got to all work together to figure that out.

One of the things I did find interesting was one of the detectives I talked to said that she has a daughter who is a minor that has Social Security disability. And within a week, the detective herself actually started receiving AARP paperwork applications, because they thought that the Social Security disability was from her, not this minor. So somewhere along the lines we have got this sale of personal information that is going back and forth. And that probably needs to stop too because of what all is in that information that is going elsewhere and out there.

So I don't know what the answer is, as far as the unemployment benefits. I fear with this newest hack that is just coming about with the auditor's office, that this is just the tip of the iceberg. They are getting so smart, and they work all day on doing this. So I don't know what the answer is.

Mr. PENCE. Thank you for what you do, Ms. Ponto.

I yield back.

Mr. PALLONE. I thank the gentleman. Next—Mrs. Dingell is not here, so we will go to the gentlewoman from New York, Ms. Rice. Kathleen?

Ms. RICE. Thank you, Mr. Chairman. At the epicenter of the initial coronavirus outbreak in the U.S., State and local officials in my State of New York and in my district on Long Island were also the first to deal with the issue of price gouging.

So at the start of the pandemic, a pharmacy in my district, for instance, was selling N95 masks for \$5 each from open boxes of 20. And then, in another part of town, we had hand sanitizer going for all different amounts for tiny sizes, ounce sizes of—you know, up to \$10 for a 4-ounce bottle at—and this was all within, you know,



three different locations within a 10-minute drive apart from each other.

Nassau County, which my district sits in, made a little bit of history when Federal prosecutors brought the first case in the Nation under the Defense Protection Act against the owner of a warehouse store who was hoarding more than 4 tons of personal protective equipment and marking up items by as much as 1,328 percent.

So Ms. Rich, if I could start with you, in my district we were able to overcome these challenges because we had strong local leadership, and we mobilized our Department of Consumer Affairs. Can you just talk a little bit about how the FTC has or hasn't responded to price gouging complaints during the pandemic?

Ms. RICH. Yes. So I am not an expert on price gouging, because it is typically handled on the competition side of things, rather than consumer protection. But I understand that, when the FTC looks at this issue, it looks at it through its unfairness authority, which requires a detailed cost benefit analysis of price changes, of the reasons behind it, of the effect on consumers and competition.

Its unfairness authority is not a nimble way to respond to a fast-moving problem. A better way, which would be more similar to what happens with the States, would be for Congress to decide to set forth legislation establishing standards for price gouging but similar to what happens in the States, where they define it either by a percentage or fluctuations that happen within a certain period of time compared to the prices, you know, 5 days ago or whatever.

Clearer standards would allow for much more nimble enforcement than unfairness. And then the FTC could enforce those standards in the way that you want.

Ms. RICE. So do you think it is one of the—that is one of those issues that should be handled at the local level?

Ms. RICH. Thirty-four States have legislation. You were just talking about how effectively it was done at the local level. But there may be companies that operate nationwide, which would make it appropriate for the FTC to handle something like that.

Ms. RICE. Well, certainly, you know, with the increase in various e-commerce platforms, it has made it harder for local officials to go after price gougers who are on the other side of the country or on the other side of the planet. So I guess that is a specific role for the FTC to play.

You know, so I think it is really important, you know, if you talk about section 13(b), and what I am hearing from every single witness here today is that Congress needs to act forthwith. So I just want to maybe have, you know, Ms. Rich or Mr. Kovacic, anyone who has an opinion about this—so it is one thing in terms of what the Supreme Court is going to rule on, in terms of recouping stolen money. But maybe talk a little bit more about what additional penalties—I think it was Mr. Kovacic who was talking about the lack of—I mean, if you look at what happened with the, you know, stealing the tips from taxi—or delivery drivers, I mean, that is just absurd that, you know, you call—we call it a victory, just because we got the money back and we are going to distribute it to the victims.

But—so maybe just talk a little bit more about what Congress should look at, in terms of additional penalties, other than just recouping—allowing the FTC fraud jurisdiction to recoup lost money.

Ms. RICH. Yes, the penalties are a very important area too. And certain—you know, most—many agencies, like the CFPB and many State AGs offices, have the capacity to impose penalties in a way the FTC doesn't, even though the FTC has this enormous jurisdiction and mission to deter this behavior. So the—I think Congress should consider giving FTC penalties across the board, but at the very least in certain key areas like privacy.

Like, you know, the gig economy was another—was an area that we just talked about with what just happened with Amazon. And that was something that the acting chair is supporting in certain areas of fraud where they can't get penalties at this point. That would be very important, as well.

Mr. PALLONE. Thank you.

Ms. RICE. Thank you, Mr. Chairman. I yield back.

Mr. PALLONE. Next we go to—I thought I saw Mr. Armstrong. Is he there? Oh, yes. The gentleman from North Dakota, Mr. Armstrong, recognized for 5 minutes.

Mr. ARMSTRONG. Thank you. Mr. Cárdenas referenced a 13(b) proposal by Senator Wicker. I believe that that was part of the Senator's privacy proposal, so I think we would all be pleased to see it move as part of a broader effort.

Given that, I would just like to ask our two FTC veterans on the panel this: If we are going to address 13(b) and consider first-offense penalties for privacy violations and rulemaking authority, does it—it doesn't make sense for individual States to add conflicting rules and allow private rights of action, correct?

[No response.]

Mr. ARMSTRONG. It is easier in person, you can just do it, but—yes, please.

Ms. RICH. Preemption and private right of action are some of the key issues that are subject to the debate. If State laws—if there is any discussion of preempting State laws, at the very least the States should be able to enforce the law, any law that gets passed at the Federal level.

Mr. KOVACIC. First, I applaud the sense of urgency with which you and your colleagues, Congressman, are approaching the development of a comprehensive, nationwide privacy policy. At the moment, our national privacy policy is being set in California and Brussels, and we don't have one at the national level. So I think it certainly deserves your attention.

My intuition on private rights is that I would perhaps begin by creating the robust public enforcement framework, which is the collaboration between the Federal and State authorities. I would see how that works for a while, and I would take stock of that in 5 years, and decide what kind of private enforcement I want to develop. Maybe you develop private enforcement that is a follow-on to the State and Federal enforcement. But I think you have a great deal of room to maneuver and to shape the program in a way that reflects the competing interests that have been brought to bear in the fruitful debate you are having about private rights.

On the preemption, I would like to preserve, in general, a framework that promotes coherence at the national level. Because the States, in a number of instances, have had very useful additions to the framework, by way of experimentation I would like to preserve some capacity on their part to perhaps go beyond provisions of the national coverage and to experiment with new techniques that could be adopted and brought into the Federal scheme.

I confess I don't have an excellent administrative mechanism to do that, and I hesitate a bit because I see the benefits of the broad coherence. But I also see benefits that States have brought to the process by being able to do things that the Federal system has not done at the moment. So I would like a mechanism that incorporates both of those elements and policymaking.

Mr. ARMSTRONG. Well, I appreciate that. As a former chair of a State senate judiciary committee, I can tell you two things: we like to have State authority, and I don't—with all due respect to my good friend, Congresswoman Castor, North Dakota politics and California politics are pretty significantly just distinct and different. But we sure seem to get a lot of uniform laws that are based out of California.

So just as we go through this, I want to just point out a couple of things, and one, I am excited to be on this committee. No offense to all of my colleagues on Judiciary and Oversight, but we have made it well into 2 hours and nobody is yelling at each other yet. So that is—it is very different.

And two, I just—just so—as we are doing in the actual COVID thing, according to the FTC, North Dakota has had over 270 COVID-related scams. And we are actually really lucky. We have a great attorney general who has been on top of these things, and also—and has started warning our consumers about it as early as last April.

But I just want to be clear real quick that product liability is actually almost always primarily a State law function, and it is a principle that manufacturers, sellers—strict liability and defective consumer products. I do think we have to have a broader—I am glad people were asking questions about section 230 and how it applies as people—as online retailers become part of the entire distribution chain, and the distinction between an online retailer and that.

And then I would also just say we have to be careful in anything we do that doesn't further entrench the big guys and decrease competition.

And with that, I will yield back.

Mr. PALLONE. I thank the gentleman. And now we are going to move to the gentlewoman from Minnesota, Ms. Craig.

You are recognized for 5 minutes.

Ms. CRAIG. Thank you so much, Chairman. Thanks for yielding, and thanks for having me on this committee and on this subcommittee. I am super excited to be here.

I want to expand on the conversation in my question to you and highlight the work on COVID-19 that I began in the last Congress on scams related to COVID-19 with my fellow Minnesota Congressman, Pete Stauber. Together we introduced a bill called the Stop Coronavirus Scams Act of 2020, which would double the appli-

cable forfeiture penalty, criminal fine, and term of imprisonment for anyone who provides misleading or inaccurate caller information in an attempt to defraud, cause harm, or wrongfully obtain anything of value by using false information related to COVID-19.

While this bill primarily deals with the FCC's existing authorities under the Communications Act, I wanted to bring it up in the context of the comment you made about fraud not occurring in a bubble and how it relates to other entities, individuals, and systems to function, including the platforms and conduits through which scam artists disseminate fraudulent information.

You note in your testimony that among the warning letters that the FTC sent regarding COVID-19 scams were letters to Voice Over Internet Protocol providers and other companies, warning them that routing and transmitting illegal robocalls related to COVID-19 is against the law. In one of those joint letters sent by the FTC and FCC, the agencies noted that these unwanted robocalls included messages alleging that recipients have been charged almost \$400 for tech support services but may receive a refund by responding to the robocall. They also included robocalls falsely claiming to come from the United States Social Security Administration threatening cutoff of SSA benefits.

Clearly, these activities have the potential to inflict harm on consumers. Given the severity of the ongoing crisis, do you feel these bad actors would be less willing to engage in fraudulent activities if the fines and penalties were increased for covered communications related to COVID-19?

And are there any other actions, including legislative fix to 13(b), that Congress should be contemplating in this area?

Ms. RICH. I think that strong fines and penalties—I haven't reviewed your act, but it sounds like there are criminal penalties. It would be very important to deter these, you know, terrible acts.

But I also think the responsibility of platforms is very, very important. And 230, of course, is a very complex undertaking and beyond the—230 reform—and beyond the subject matter of this hearing.

But I do think that this subcommittee could be thinking of other responsibilities to impose on these platforms and large hosts of other content, short of 230 reform, along the lines of the Informed Consumers Act that would actually spell out duties, as opposed to imposing—just imposing strict liability and have everybody wonder what it is they are supposed to do. It would impose specific duties on the platforms to screen out some of this content.

Ms. CRAIG. Ms. Rich, I really appreciate you and all of the panelists being here today.

And Mr. Chairman, with that, I yield back.

Mr. PALLONE. Thank you. So now we go to the gentlewoman from Arizona, Mrs. Lesko, for 5 minutes.

Mrs. LESKO. Thank you very much, Mr. Chairman. It is an honor to be a new member of this committee. And I thank all of the witnesses for their testimony.

Earlier on in the testimony, Ms. Ponto, you had said you need—you would suggest we need more help from the FTC. And so can you give examples of where you needed help from the FTC and it was possibly a little bit lacking?

Like, could you give us concrete examples of how you could get more help from the FTC? What specifically?

Ms. PONTO. Thank you. So I reached out to detectives at the Spokane Police Department, just to find out more about the fraud that they were seeing, because they are the ones who are going to put the bad guys in jail. And my opinion, that is what we need to be doing.

What she gave me, an example, was—is that there was a particular case where we had an elderly victim, and she lived in an assisted living center. Her adult son was her power of attorney, and he was in charge of all of her finances. One of the caregivers at the assisted living center started stealing credit cards from multiple residents.

And so, in an effort for the adult son, the power of attorney, to go and get the evidence from his elderly mom's accounts, he had all of his documentation, he had his paperwork, and he went to the first credit card company. They declined to help him or give him the information he needed. So then he went to the bank, and they helped him get information on her accounts. But if his name was not on a credit card, then he did not get that information.

He then went to the detective and signed all the paperwork, all the authorization forms, showed the power of attorney. She ended up having to write three different search warrants, because she kept coming up with roadblocks. At the first business they claimed that they had contracted out to someone else, so really you need to do a search warrant at the second place. So she goes to the second place. They played a game of, well, you know what? This is not really our business address, this one is. So she ended up writing three warrants by the time it was said and done.

Two months it took for her to get the account information. Two months. And in that time that she got that paperwork—she only got a third of it, she didn't even get everything that she needed to possibly bring charges against this caregiver.

What—she wanted to specifically address that, under the Fair Credit Reporting Act, businesses are required to provide this information. And the FTC wants to hear if we are not getting that kind of cooperation. But the problem is that she did not feel like there was any teeth from the FTC, that maybe it was a, you know, a threat, or “get it done,” but there was nothing that caused them to make sure that she got all the information that she needed. And so it really would have been quite helpful if they would have stepped in at that stage and be able to help get our detectives the information they need from these different financial institutions or credit card places, so they can bring charges to these folks, put them in jail.

Mrs. LESKO. Well, thank you very much, Ms. Ponto.

And maybe that—maybe I will go to Ms. Rich next, then, since you used to work at the FTC, and see if you have any comments about what Ms. Ponto said.

I mean, one of the other witnesses said the pay is lower at the FTC and found that as a problem. Do you need more staff there?

Why are these things falling through the cracks, in your opinion?

Ms. RICH. I don't know why that, you know, particular issue fell through the cracks.



I also don't—to be honest, I don't recall whether this particular provision of the FCRA is enforceable and has teeth. I can assure you that the FTC is watching this hearing today and is taking this very seriously, what Ms. Ponto was talking about, because working with partners on identity theft is hugely important.

The FTC desperately does need more resources. They are paid less than other agencies, but I don't think that stops the commitment to work diligently to help consumers. So many people there are already working for much less than they would in other places they could be working. But the number of staff—I mean, sure, give them what they deserve to be paid, but the issue is more the strain on the number of staff.

You think about—you on this subcommittee know more than anyone the broad mission of the agency and what it is tasked to do and how it is very small compared to other agencies, but its mission is huge.

Mrs. LESKO. Thank you, Madam Chairman, and I yield back.

Ms. SCHAKOWSKY [presiding]. Great, and I am back. And so let me catch up. Has Congresswoman Trahan—have you asked your questions yet, or is it your turn?

Ms. TRAHAN. I think it is my turn. Thank you.

Ms. SCHAKOWSKY. OK, you have 5 minutes.

Ms. TRAHAN. Thank you, Chairwoman Schakowsky and Ranking Member Bilirakis.

And for the record, as New England sits on the sidelines watching the Super Bowl this year, I for one will happily take the GOAT back. So, go Bucs.

Hey, so first, thanks to all the witnesses for testifying today on behalf of the many victims of fraud who have been cheated with phony letters about COVID treatments and cures. I really appreciate you hanging for the duration.

Ms. Rich, I want to focus my question on what more the FTC can be doing to protect consumers and deter bad behavior by fraudsters. And, like my colleague from Minnesota, I was compelled by your observation that “fraud does not happen in a bubble, it relies on other systems to function.”

And this very point was raised by Consumer Reports with the FTC last summer in comments about the need for clearer guidance on online reviews and endorsements. And they wrote, “Social media sorting algorithms tend to prioritize posts that receive more engagement from users with higher followers, providing further incentives for marketers to use deceptive tactics to augment those numbers.” I am convinced that they have put their finger on the heart of this issue and the broader challenge of social media misinformation and disinformation, the faulty incentive structures involved in these algorithms.

Now, recognizing that you are no longer with Consumer Reports, I would like to ask your thoughts on how we can better rein in these practices used by scammers to make products look more popular than they are. How else can the FTC update the endorsement guides to keep pace with these manipulation strategies in the online marketplace and social media?

Ms. RICH. Well, I am no longer with the FTC or with Consumer Reports. But I was in both places, so I am very sympathetic to everything that you are talking about.

Deceptive endorsements are a horrible problem. The FTC has comprehensive guides, and it—for a lot of enforcement, actually. But this is pervasive, and the enforcement hasn't been able to make at all a dent in this problem. And, of course, because of the rapid development on social media, it just—it changes its format all the time. And while the deceptive—the endorsement guides have specific examples, when the FTC only updates its rules and guides, like, every 10 years, it is just not enough to keep pace. So I am very sympathetic to all those points that have been made by Consumer Reports and you.

This may be an area where more teeth are needed because of the pervasiveness of this problem. Maybe a rulemaking. And I think this is something that Commissioner Chopra raised when the comments went out, that—and I know Consumer Reports also mentioned maybe there need to be more bright lines here. And if there was a rule enacted, then there could be civil penalties for it.

So, of course, the best way to get this done would be for Congress to authorize rulemaking, and the Commission to pass a rule, because otherwise it is going to use its cumbersome Magnuson Moss procedures. But I really do think there needs to be more—more teeth in what the FTC can do in this area because it can't make a dent.

Ms. TRAHAN. Great. That is super helpful.

Ms. PATTEN, following up with Ms. Rich's comments, I would love to hear your thoughts as well. I mean, you went straight after section 230 in your testimony, but you also noted that narrower approaches are on the table, like Senator Baldwin's COOL Online Act. With respect to the specific issue of endorsement guides, do you see room for improvement at the FTC as well?

Ms. PATTEN. Absolutely. I mean, I think, you know, we can't ask the FTC to do more, unless they have more resources available to them. And, of course, you know, we have seen a change in, you know, endorsements from influencers. It started out with clothing and private jets, but now, you know, we are getting into serious issues when it comes to treatments and preventions for COVID.

So, obviously, that is an area where the FTC is incredibly concerned, but they don't have the resources. I mean, if you look at Instagram alone and you search the hashtag COVID-19, you are going to come up with more than 20 million hits. No human can go through that. So they need the technology and resources to really address this issue.

And I absolutely agree that updated endorsement guides are needed, and that penalty authority for first-time offenders on social media influencers would be incredibly helpful.

Ms. TRAHAN. Thank you. I will try to squeeze in my last one, but if I get cut off, that is fine.

You know, Mr. Kovacic, I was intrigued by your recommendation that the FTC borrow some of the lessons from UK's Competition and Markets Authority, particularly its establishment of a data unit. As one of our panel's insider experts on the FTC, can you ex-

pand upon your reasoning that the FTC should adopt something similar?

And if I have out of—if I am out of time, I am happy to submit that question for the record.

Mr. KOVACIC. Notice that just a moment ago, Congresswoman, you were referring to algorithms and the ability to understand what goes on inside these systems.

Part of the rationale for the UK development of a data unit—which has 40 people, mostly technologists, not lawyers and economists, but real technologists—is, one, to understand what is going on inside those processes; two, to do searches, intelligence searches that allow you to figure out what is in that mass of 20 million hits, what is going on there; and to distill some lessons about what is taking place in the marketplace.

During COVID this group was doing almost real-time assessments with respect to complaints, patterns in complaints, identifying within a couple of days where the hotspots were with wrongdoers, repeated indications you could focus attention. And now they have a major program that they have just launched to use their new study in algorithms on both the competition and consumer side to get a better idea of how firms use algorithms to target individual vulnerable consumers and to prey upon them. And——

Ms. SCHAKOWSKY. OK, I am going to have to—we are over a minute over, and I am going to have to cut you——

Ms. TRAHAN. My first subcommittee meeting, and I went over. I apologize. Thank you so much to the witnesses.

Ms. SCHAKOWSKY. And, you know, you can put something in writing or reach out to him personally. And I understand that Debbie Dingell is there.

Congresswoman Dingell, are you there?

Mrs. DINGELL. I am, thank you.

Ms. SCHAKOWSKY. OK, it is your turn for 5 minutes.

Mrs. DINGELL. Thank you. Sorry, I was over voting. And thank you for holding this hearing today. It is a very important one, and we have learned a lot, listening to every—all of the questions on both sides of the aisle.

You know, this pandemic has made us more isolated than ever, which leaves people, as we have all been talking about, turning to the internet, social media, and other resources in search of community. They just want to talk to somebody, help and comfort.

And many of the scams that my colleagues have been talking about today, and the witnesses highlighted, prey on people's loneliness and fear during this unprecedented time and can originate and do originate and proliferate on these platforms. Scams have affected—we have heard the stories from some of you—struggling families, people then embarrassed to tell somebody something happened, individuals seeking employment during the crisis, and seniors who are just plain scared and desperate, trying to protect themselves and those around them from the virus.

It is unconscionable that, during this unprecedented time, individuals and families cannot be certain of what is real and what is not real of the products and services that—the victims of these scams cannot receive the compensation they deserve.

And just for the record, I have started—I have got a file that thick of ones that I have gotten. In some days I don't even know. You know, I will get a “Hey, your Yahoo! Mail is about to be cut off. Give us this to”—or the Amazon, it is—and I have hearings like this, and you teach me, and it is pretty scary.

So FTC guidelines and authorities need to meet the demands of evolving technology and tactics and reflect our continuing priority of protecting consumers. So that is what we have been talking about.

So let's start by discussing social media consumption habits and its impact on consumers' vulnerability to frauds and scams. Last August there was a new report that discriminatory ads are still appearing on Facebook, even after the landmark settlement in 2019 that Facebook violated Federal antidiscrimination laws. It appears that advertisers are able to use Facebook's platform to microtarget populations based on their identities of age and race.

Ms. Rich and/or Ms. Patten, could tools that Facebook provides to microtarget ads be used by scammers to target and exploit vulnerable populations, exasperating these harms?

And what steps are social media companies and the FTC taking to prevent such abuses?

Ms. RICH. Well, the settlement you discussed between Facebook and the civil rights groups was Landmar, and it gave the civil rights groups—it prohibited advertising that would enable discriminatory ads on Facebook. And Facebook, in implementing its response to the settlement, announced changes to its platforms that would cut off certain demographic information to advertisers.

It also—the settlement gave the civil rights groups certain rights to access and test the platforms to see if they were going to—working now better and complying with the settlement. And one question I have is whether this—how effective that is. You know, the civil rights groups don't have subpoena authority. They don't have law enforcement authority. And so it doesn't compare to a Federal investigation.

So one thing I wondered when I was thinking about this is whether there should be a role given to the FTC here to look at this type of violation. The privacy bills from last year, both from this subcommittee and on the Senate side, Cantwell and Wicker, did give a role to the FTC in examining the use of algorithms and discrimination based on those algorithms. So I wonder if that should be revisited to give the FTC a role to help the civil rights groups to supplement what the civil rights groups are doing to try to solve this problem.

Mrs. DINGELL. Well, I would like to follow up after this with more—to see if there is something we should pursue. And that—with the chair, we would look at.

Ms. Patten, since I only have 23 seconds, did you want to add anything? And I will do the rest of my questions for the record. Ms. Patten, any comments?

Ms. PATTEN. No, I think Ms. Rich did a wonderful job of covering it. Thank you.

Mrs. DINGELL. Thank you. Madam Chair, with 7 seconds left, I have never been known to talk for a short period of time. I yield back.

Ms. SCHAKOWSKY. Well, thank you. I want to be sure—is Congresswoman Fletcher still here?

Mrs. FLETCHER. Yes, Madam Chair.

Ms. SCHAKOWSKY. OK, then you are recognized for 5 minutes.

Mrs. FLETCHER. Terrific. Well, thank you so much, Chairwoman Schakowsky and Ranking Member Bilirakis, for organizing today's hearing. I appreciate the opportunity to hear from these witnesses about protecting consumers from fraud during this health and economic crisis. I appreciate the insights and share so many of the information, the perspectives that many of my colleagues have shared about the damage that this fraud is creating in their own communities, and my community in Houston is no different. But I want to get to a couple of questions, just right off the bat.

Ms. PATTEN, in your testimony you mentioned that there was a need for the civil penalty fund to compensate consumers who have been monetarily harmed. And can you expand on the potential for this type of fund, and how it would interact with settlements from individual cases?

How can we ensure that this type of fund will be well-funded enough to provide meaningful compensation?

Ms. PATTEN. Yes, thank you. So, as it currently stands, when the FTC is able to use its penalty authority—for example, in the Facebook example, where it violated an order and they got billions of dollars, that money went into the general treasury.

I would propose that what is absolutely needed is if that money was put into a fund that could reimburse victims of fraud and scams. So often the FTC, using 13(b) authority, comes upon a defendant that doesn't have the resources to reimburse victims. And so, if it had a fund, it could use that money to make victims whole that have been, you know, scammed from their money.

Mrs. FLETCHER. Thank you. That is helpful.

And following up on that question, I think, Ms. Rich, you also mentioned Chairwoman Schakowsky's leadership in allowing the FTC to impose fines on perpetrators related to COVID-19 fraud for the duration of the public health crisis. Other than this issue of 13(b), is there additional short-term legislative action needed to address the COVID fraud effectively?

Ms. RICH. Oh, COVID fraud, specifically?

Mrs. FLETCHER. Sorry, yes.

Ms. RICH. No, that is OK. I think—I am not sure about the—as Ms. Patten noted, there are gaps in the December legislation, but I—other than 13(b), I really am focused on the broader picture, too, of civil penalties more broadly.

I would agree with Ms. Patten that a civil penalty fund would be enormously helpful, and it is something that the CFPB already has, so there is a model there that another consumer agency is already using. That also would help during this—certainly would help during this period, as well as afterwards.

Mrs. FLETCHER. And I apologize. As Chairwoman Schakowsky noted, we have run back and forth to vote, so you may have answered this already and I may have missed it. And, if so, I apologize. But in putting together that fund, and in terms of there is a model at the CFPB, how would you imagine would be sort of the

most effective way, if we were to design this kind of program, for that to be administered?

Ms. RICH. The CFPB model allows you to take money that is obtained in a civil penalty case and use it to distribute redress to consumers in another case involving civil penalties. Now, I don't know why it is designed that way—maybe because to allow too much crossover between redress and civil penalty cases violates something. But the more flexibility that the FTC could have in using the money from these funds to compensate consumers, the better.

Mrs. FLETCHER. And is there any other—if this committee were to draft legislation to address this challenge, is there any other information or power you think the FTC would need to be granted legislatively to make this possible?

Ms. RICH. I think you could enact it, and give—and it would happen in the same way that the Dodd-Frank Act gave this power to the CFPB.

Mrs. FLETCHER. OK. Well, thank you very much, Ms. Rich, for that.

I have only got 22 seconds, but if I can go to Mr. Kovacic very quickly, given your experience with the United Kingdom's Competition Markets Authority, can you speak a little bit to the ability of the FTC to protect and fairly compensate Americans from international scams and fraud?

And since I am running out of time, perhaps I will ask you that question for the record and get a written response from you following the hearing.

Mr. KOVACIC. That is great. Short answer: The SAFE WEB renewal is a very important part of that infrastructure. So thank you for doing that.

Mrs. FLETCHER. Thank you.

Mr. KOVACIC. I am happy to answer your questions too.

Mrs. FLETCHER. Thank you. And Madam Chairwoman, I yield back.

Ms. SCHAKOWSKY. Thank you.

So I see that Congresswoman Clarke is still here, and I want to thank you for that. And you are recognized for 5 minutes.

Ms. CLARKE. Let me thank you, Madam Chair, and let me also thank my classmate, the new ranking member for the subcommittee, Mr. Bilirakis, for holding this very important and timely hearing on scams and fraud.

During the public health and economic crisis, we must ensure that consumers are not taken advantage of by malicious actors—not only taken advantage of, but severely harmed. It is deeply troubling to me that, throughout the COVID-19 pandemic, there have been ongoing reports of coronavirus-related scams across the Nation. These fraudulent acts range from price gouging on essential products to scams that take advantage of struggling small businesses. This simply cannot continue. During this time of crisis, we must band together to stop these efforts to defraud the American people.

I am particularly concerned about the disproportionate impact of these scams on vulnerable communities, communities who have already been struggling with the combined impacts of COVID-19 and economic crisis, and the deep systemic inequities that are pervasive



in our civil society. According to the FTC's own research, folks who are Black and Latino are more likely than their White peers to be victims of fraud. And yet that suggests that there is also a serious underreporting of fraud from these very same communities.

As my colleague Congresswoman Kelly mentioned earlier, the FTC launched its Every Community initiative to address underlying disparities of fraud. The FTC also released a report in 2016 that set forth a comprehensive framework to specifically tackle fraud in Black and Latino communities.

So, Ms. Rich, one of the report's recommendations was to bolster fraud prevention strategies in Black and Latino communities through targeted education and awareness campaigns. What steps do you think the FTC could take to better implement these fraud prevention strategies in minority communities?

Ms. RICH. Well, you are right that we had a very comprehensive plan. And I think the pandemic, if not other things, seriously impaired the ability to do that, because one part of the plan was meeting and connecting with different communities. And sometimes you really have to do that face to face.

And so much of this is developing trusted relationships with different community organizations. And then they, in turn, can interact with their communities to encourage more information about fraud, and they can relay that back to the FTC. So I really do think it is time, even before the—even while we are still in a pandemic, we have got the videos, we have got all sorts of channels we can use to really ramp that initiative up.

And it costs money, because it involves materials. It should involve more research because of those findings that you just referenced. That was about the Black and Latino communities. It was a small set of findings. There is a lot more research that needs to be done to figure out more effective ways to reach out into these communities. So—

Ms. CLARKE. I look forward to further discussing this.

Ms. RICH. Yes.

Ms. CLARKE. And looking at ways that we can be nimble and creative in penetrating those communities that are most vulnerable. I would like to also add Native lands to that as well.

Ms. RICH. Yes.

Ms. CLARKE. The FTC's 2016 report also highlighted law enforcement actions that can be taken to address these disparities, including bringing more cases against entities that intentionally target or disproportionately impact vulnerable communities, Black and Latino. Can you briefly provide some examples of how scammers target minority communities?

Ms. RICH. Yes. Well, you know, one thing that is certain is that scams do target everybody. But, especially during this pandemic, when we are seeing that minority communities and people of color are being harder hit by COVID-19, we are seeing a corresponding exponential growth in scams targeting people that are suffering the most, economically and health-wise. And unfortunately, that means that many people of color and in minority communities are taking the brunt of a lot of the scams and schemes that are targeting these populations.

Ms. CLARKE. Well, thank you.

And Madam Chair, I appreciate the time. I have additional questions that I would like to submit and get responses for.

But this is an area that is very—it is very important that we drill down and come up with strategies for combating. With that, Madam Chair, I yield back, and I thank our witnesses for their expert testimony today. Thank you.

Ms. SCHAKOWSKY. Thank you. There are two people that have waived on to the committee. I am going to first call on my buddy, Buddy Carter, for 5 minutes.

The floor is yours.

Mr. CARTER. Thank you, Madam Chair, for allowing me to waive on. And let me add also that this is my favorite subcommittee that I am no longer on. So I appreciate it very much.

Ms. Ponto, I wanted to ask you. I passed legislation—bipartisan legislation, by the way—that was signed into law in January. It is called Combating Pandemic Scams Act. And it really instructs Health and Human Services, as well, to work with the Postal Service as well as with the FTC to come up with a user-friendly website so that people can go to it and read about these type of scams, and also to actually enter into the website their experiences with scams, so that they can become better educated as to what is going on here.

Obviously, with your experience in your area, you have seen a lot of scams and other issues that have come up like this. And I was just going to ask you, could you tell us or share with me very quickly what are some of the most egregious scams that you have noticed?

And how have they been—have they been internet-based, have they been phone-based, or what?

Ms. PONTO. Thank you for that question. One of the—this is my first year. I just retired last year and took this position. So I am still kind of learning this whole game with identity theft and fraud.

But I had a gentleman come in. He was a truck driver. And he had come in, he had purchased a security camera system online. He had gotten the equipment. It didn't work. It took him a couple of months, but he ended up with somebody reaching out to him and trying to walk him through the service of getting it fixed.

When they were not able to get it fixed, they said that he qualified for a refund in the amount of \$400. They put \$4,400 into his account. He actually got online, looked at his bank account. So he had to have shared routing numbers for them to make this refund. There it is, \$4,400, kind of a generic name. He prints it out.

And then, of course, that is when it starts. You know, "Oops, we accidentally sent you too much money. So you keep, you know, X dollar amount, and we would like you to go and get the rest of the refund in gift cards. We suggest you going to Fred Meyer's and Target." And again, it is these gift card scams that we are seeing, and we are not understanding where—how do reasonable people think this sounds right? Why are we missing the flags?

And so that is what he did. And he ended up losing X amount of dollars, because it was his own money that he was, you know, putting into these gift cards, scratching off the numbers, and giving it to the gentleman right over the phone, and done. This guy was calling him easily a dozen times a day.

You see a lot of these scams coming in. And it is very alarming, because there is an online portion to that.

He showed me his bank account. When he went to the bank, the bank told him that money had never been in there in the first place. And yet here we are, looking at his bank account, and there it is.

Mr. CARTER. Right.

Ms. PONTO. So there is a sophistication level that we are not understanding. But common sense, people. This doesn't look right, these are so many red flags, and so how do we—

Mr. CARTER. Right.

Ms. PONTO [continuing]. Get that out to our folks?

Mr. CARTER. And really, this was the reason for my—and for the—and the impetus, if you will, behind the legislation was to educate people as to these type of scams and to help them understand and learn from this. Not only that, but have them have the opportunity to share.

Now, it was primarily aimed at scams during the pandemic, which we have seen: advertised ineffective PPE, we have seen advertised false cures and false preventions for the virus. That is primarily what was aimed at.

Just wondering if you—what do you think is the best line of defense?

What do you—Ms. Ponto, can you share with me very quickly what—how can we help people the most?

Ms. PONTO. I truly believe in the service that we provide, this Community Oriented Policing Services. Like I said, we have nine COPS shops throughout our city of Spokane. They are in the neighborhoods. The neighbors, when they don't get the response that they are looking for from the police, or the police are unable to help them, they come to us because we are within blocks of them walking, and we are a fantastic first line to help them. And then we can actually walk them through the process of identity theft reporting. And I think that is a huge tool that other cities really need to take a look at.

Mr. CARTER. Good. Well, thank you very much for your help and for your testimony—for all of the witnesses.

And again, it is the Combating Pandemic Scams Act, and it is a good piece of legislation. It is good law now that hopefully will help people, to educate people, and help them to share their experiences.

And again, Madam Chair, thank you for allowing me to waive on, and I yield back.

Ms. SCHAKOWSKY. Thank you. Well, I miss you, Representative Carter, on the committee. And I also really miss Congresswoman Rochester on the subcommittee.

And I yield to you 5 minutes, and welcome both of you any time to waive on.

Ms. BLUNT ROCHESTER. Thank you so much, Chairwoman Schakowsky, for allowing me to waive on to this vital subcommittee, and especially for your vision for the 21 Century Consumer Rights Agenda, a powerful, powerful vision.

And I too want to congratulate Ranking Member Bilirakis for his new appointment.

And thank you to the witnesses for testifying. As we all know, we are in the middle of the worst public health crisis in a century and a crippling recession. The last thing my constituents should be worried about is fraud and scams. Sadly, the stories we heard at our last hearing have, unfortunately, not stopped.

Thankfully, at the end of the last Congress, we took action, and I was proud to colead the Combating Pandemic Scams Act and proud to support the COVID-19 Consumer Protection Act. I will soon reintroduce my bill, the Fraud and Scams Reduction Act, which will continue to make important reforms to empower the FTC and key stakeholders. We need to take action to address the prevalence of scamming in the U.S. And in that regard I would like to begin my questions with Ms. Rich, and I would like to follow up on Ms. Kelly's questions earlier.

In your testimony, you identified the importance of reaching every community. Yet you mentioned a lack of demographic data in the FTC's current complaint database. From your experience, what kind of demographic data does the FTC currently collect, and what kind of data should they be able to collect that you believe is not being collected?

Ms. RICH. Thank you. This is a very important issue. Well, I haven't been there for 4 years, and I know they are doing a lot with data. You can go to the website and now see all sorts of breakdowns, including by State and locality, et cetera.

But when I was there, we did not collect the kind of demographic data that you need to figure out whether scams—or how scams are saturating different communities. And the findings that had been cited in this committee that scams—that people in African-American and Latino communities complained, but they are disproportionately victimized by fraud, was that—that analysis was done through work-arounds using general fraud data and census data. And it was painstaking, and it was very time consuming. But much more of that work is needed.

And so, you know, it is very sensitive to collect demographic data, so—and maybe the FTC has, you know, been giving this some thought since then. So I really encourage you to engage directly with the FTC to figure out how they can get this done, because we cannot—they cannot figure out what is going on on the ground without it. So it is very important.

Ms. BLUNT ROCHESTER. Yes, I think one of the followup questions that we will have is about what authorities they would need to successfully expand this program.

My next question is following up on Ms. Trahan's line of questioning as well. We were in—pretty similar questions regarding—this is to Mr. Kovacic.

In your testimony, you suggested that the FTC could benefit from better data analytics. Can you give us some examples of the trends that the UK watchdog identified that we would not be identified—that you would not have identified without the better data tools that—and would have taken too long to identify?

Mr. KOVACIC. Yes, they were able to spot trends and patterns in episodes of misconduct and complaints within 2 or 3 days instead of taking a month to sort through information.

They were able to process, at least week by week, a very accurate profile of where the complaints were coming from, who the firms were so that, when you started your combination of warnings, lawsuits, and other publicity—publicity going out to consumers saying, “Here are the problems.” That is, “Last week we saw this problem. It is happening right now. Watch out for this problem.” They were able to compress that kind of analysis, outreach, enforcement, education into a couple of days, instead of it taking maybe a month.

And on your question, Congresswoman, about doing the research, you can use—you can start to use this kind of capability as a platform to work with researchers who do this kind of analysis—academic institutions, intellectual hubs—to build a better understanding of how commerce and misconduct take place in disadvantaged communities. And you can build this capability to use those tools to get a better idea of what is going on. That is a useful partnership between the public agencies and academia.

Ms. BLUNT ROCHESTER. Thank you. We would like to follow up with you on the lessons learned by the UK that Congress can learn, as well as the FTC.

Thank you so much, Chairwoman, and I yield back.

Mr. KOVACIC. Thank you.

Ms. SCHAKOWSKY. Well, thank you. I really appreciate the incredible testimony, and the Q and especially the A, the answers that we got. I think it is obvious, I hope, to all the witnesses that this is one of the most popular hearings that I have been at, and I think one of the most revealing, in terms of the suggestions that we got. That is always so important.

So thank you. Thank you for what you have done. And I am sure you are going to get some followup questions, and I hope that you will—and expect that you will—answer them promptly.

And without objection, I want to add into the record letters from—for the record, a letter from USTelecom, a letter from the FTC, a letter from the Coalition of Online Accountability, and a letter from the FTC to Representative Latta.

And without objection, so ordered,

[The information appears at the conclusion of the hearing.]

Ms. SCHAKOWSKY. I remind Members that, pursuant to committee rules, they have 10 business days to submit additional questions to the record to be answered by the witnesses who have appeared. And, as I said before, I ask each witness to respond promptly to any question that they may receive.

And, at this time, with enormous gratitude, the subcommittee is adjourned. Thank you.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



February 4, 2021

The Honorable Jan Schakowsky  
 Chairman, Subcommittee on Consumer Protection and Commerce  
 Energy & Commerce Committee  
 2125 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Gus M. Bilirakis  
 Ranking Member, Subcommittee on Consumer Protection and Commerce  
 Energy & Commerce Committee  
 2322A Rayburn House Office Building  
 Washington, DC 20515

Dear Chairman Schakowsky and Ranking Member Bilirakis:

Thank you for holding today's important hearing, "Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic," which will examine the rise of scams occurring during the COVID-19 pandemic and strategies for federal and state government and the private sector to work together to protect the public.

I am pleased to share with the committee our work to combat illegal robocalls scamming and spoofing American consumers. USTelecom leads the Industry Traceback Group, a team of providers across the wireline, wireless, VoIP and cable industries who collaborate to trace the source of illegal robocalls and coordinate with federal and state enforcement agencies to bring scammers to justice.

Unfortunately, robocall scammers were out in force during this public health emergency, using COVID-19 to trick, manipulate and otherwise prey on vulnerable consumers. As soon as these scams started appearing, we began to aggressively trace them around the world. We don't just go after the scammers, but the under the radar voice service providers who let billions of these junk calls onto our shared communications network in the first place. We then coordinate with industry to raise awareness about the source of the illegal calls and with enforcement officials at the state and federal level.

Some of these tracebacks cut off paths into the United States for multiple COVID-19 robocalls scams. For example:

- The Industry Traceback Group traced a COVID-19 testing kit scam to a VoIP provider in the Philippines. ITG notified the provider it was carrying suspect traffic bound for the U.S. and within 24 hours the provider indicated it severed its relationship with the customer and the calls stopped.



- The Industry Traceback Group traced a COVID-19 HVAC duct cleaning scam to a Florida provider receiving the calls from Pakistan. After notification by ITG, downstream call providers receiving traffic from the Florida entity intervened and the calls stopped.
- The Industry Traceback Group traced a COVID-19 work from home for Amazon scam. In about an hour, ITG traced the calls to a provider in California who stopped taking the illegal calls from a customer based in Utah.
- Hospitals, already tested by the pandemic, are also targets of illegal robocallers. In one instance, the Industry Traceback Group working with one of its members quickly traced back a telephone denial-of-service attack against a hospital's emergency line, ultimately identifying the source of the attack and building a case for the FBI.

The work of the ITG has been facilitated by this committee's leadership in passing the TRACED Act, a landmark law that bolsters government enforcement, including criminal prosecution of entities and individuals actively engaged in efforts to defraud Americans. USTelecom's ITG is now the FCC's designated traceback consortium. We are proud to coordinate and share information on illegal and often fraudulent robocalls with government partners, including the Federal Communications Commission, the Federal Trade Commission, the Department of Justice and virtually every state Attorney General.

In separate letters in April and May related to our coordination to combat COVID-19 robocall scams, the FCC and FTC called this public private partnership "essential to combatting the deluge of unlawful robocalls and protecting consumers and is particularly vital in swiftly identifying scammers who attempt to defraud consumers during the COVID-19 disease outbreak."

Thank you again for bringing added attention to this topic by holding today's hearing. USTelecom and the members of the Industry Traceback Group remain committed to working with the Congress and across federal and state enforcement agencies to combat illegal robocalls. More information about our work is available at <http://www.ustelecom.org/the-ustelecom-industry-traceback-group-itg>. We look forward to being a resource on this and other topics to you and your staff.

Sincerely,



Jonathan Spalter  
President and CEO  
USTelecom – The Broadband Association

Cc: The Honorable Frank Pallone  
The Honorable Cathy McMorris Rodgers



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

October 22, 2020

The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Greg Walden  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Roger Wicker  
Chairman  
Committee on Commerce, Science, and Transportation  
U.S. Senate  
Washington, D.C. 20510

The Honorable Maria Cantwell  
Ranking Member  
Committee on Commerce, Science, and Transportation  
U.S. Senate  
Washington, D.C. 20510

Dear Chairmen Pallone and Wicker and Ranking Members Walden and Cantwell,

As you know, the Commission has used Section 13(b) of the Federal Trade Commission Act for the last four decades to secure billions of dollars in relief for consumers in a wide variety of cases, including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and deceptive business practices, just to name a few.<sup>1</sup> More recently, in light of the pandemic, the FTC has used Section 13(b) to take action against entities operating scams based on COVID-19.<sup>2</sup> In the past 5 years alone, the agency has

<sup>1</sup> 15 U.S.C. § 53(b).

<sup>2</sup> See, e.g., FTC Sues California Marketer of \$23,000 COVID-19 "Treatment" Plan (July 31, 2020), *available at* <https://www.ftc.gov/news-events/press-releases/2020/07/ftc-sues-california-marketer-23000-covid-19-treatment-plan>.

The Honorable Frank Pallone, Jr.  
 The Honorable Greg Walden  
 The Honorable Roger Wicker  
 The Honorable Maria Cantwell  
 Page 2

used Section 13(b) to provide almost \$11 billion in refunds to consumers victimized by a wide variety of schemes.<sup>3</sup> We, the five Commissioners, agree that 13(b) is a critical tool in our enforcement mission. We are writing today to inform you that its effectiveness is currently imperiled and this uncertainty is hurting our current enforcement efforts, and to urge Congress swiftly to clarify the statutory text and allow us to continue to protect consumers.

Without congressional action, the Commission's ability to use Section 13(b) to provide refunds to consumer victims and to enjoin illegal activity is severely threatened. As explained below, courts of appeals in the Third and Seventh Circuits have recently ruled that the agency cannot obtain any monetary relief under Section 13(b). Although review in the Supreme Court is pending, these lower court decisions are already inhibiting our ability to obtain monetary relief under 13(b). Not only do these decisions already prevent us from obtaining redress for consumers in the circuits where they issued, prospective defendants are routinely invoking them in refusing to settle cases with agreed-upon redress payments. Moreover, defendants in our law enforcement actions pending in other circuits are seeking to expand the rulings to those circuits and taking steps to delay litigation in anticipation of a potential Supreme Court ruling that would allow them to escape liability for any monetary relief caused by their unlawful conduct. This is a significant impediment to the agency's effectiveness, its ability to provide redress to consumer victims, and its ability to prevent entities who violate the law from profiting from their wrongdoing. Accordingly, it is imperative that Congress act quickly so that the FTC can continue to effectively protect American consumers.

In addition, another recent Third Circuit decision jeopardizes the FTC's ability to enjoin illegal conduct. In *FTC v. Shire ViroPharma*, the court held that the FTC can bring enforcement actions under Section 13(b) only when a violation is either ongoing or "impending" at the time the suit is filed.<sup>4</sup> That decision unnecessarily limits the Commission's ability to obtain relief for consumers who have been harmed by unlawful conduct that occurred in the past but is not ongoing. The decision also hampers the Commission's longstanding ability to protect consumers by getting an injunction that prohibits defendants from resuming their unlawful activities in cases where the conduct has stopped but there is a reasonable likelihood that the defendants could resume their unlawful activities in the future. The decision also is impacting our ability to settle cases. Targets of FTC investigations now routinely argue that they are immune from suit because they are no longer violating the law, despite the fact that there is a likelihood of recurrence, and they make these arguments even in cases when they stopped violating the law only after learning that the FTC was investigating them.

<sup>3</sup> [https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds\\_15797958402020/RefundsbyCase](https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase).

<sup>4</sup> *FTC v. Shire ViroPharma Inc.*, 917 F.3d 147 (3d Cir. 2019).



The Honorable Frank Pallone, Jr.  
 The Honorable Greg Walden  
 The Honorable Roger Wicker  
 The Honorable Maria Cantwell  
 Page 3

Section 13(b) of the FTC Act is the agency's primary and most effective way of returning to consumers money that was unlawfully taken from them. The relevant portion of Section 13(b), often referred to as the "second proviso," authorizes the FTC to sue directly in federal court for violations of the FTC Act and states that "in proper cases, the Commission may seek, and after proper proof, the court may issue, a permanent injunction." Beginning in the 1980s, seven of the twelve courts of appeals, relying on longstanding Supreme Court precedent, interpreted the language in Section 13(b) to authorize district courts to award the full panoply of equitable remedies necessary to provide complete relief for consumers, including disgorgement and restitution of money. For decades, no court held to the contrary. In 1994, Congress ratified its intent to provide monetary remedies when it expanded the venue available for FTC enforcement cases, strengthening the Commission's ability to bring redress cases.<sup>5</sup>

Recent judicial rulings, however, indicate a dramatic shift in how courts are interpreting and applying Section 13(b) in FTC cases. For example, last year the Seventh Circuit, in *FTC v. Credit Bureau Center, LLC*,<sup>6</sup> overruled its three decades of precedent and held that Section 13(b) no longer allows the FTC to obtain monetary relief. The *Credit Bureau Center* opinion held that the word "injunction" in the statute allows only behavioral restrictions and not monetary remedies. The decision has severely limited, and in many cases eliminated, the FTC's ability to obtain equitable monetary relief against defendants located in Illinois, Indiana, and Wisconsin.<sup>7</sup>

The Seventh Circuit's decision is now persuading other courts to follow suit. Just a few weeks ago, the Third Circuit, in *FTC v. AbbVie*,<sup>8</sup> relied heavily on the analysis in *Credit Bureau Center* and similarly concluded that the Commission could not obtain any monetary relief under Section 13(b)—adding Pennsylvania, New Jersey, and Delaware to the list of jurisdictions in which the FTC's redress option has been largely neutered. Indeed, the court held that the defendant drug company violated the antitrust laws, but nevertheless reversed the district court's award of \$448 million meant to repay overcharged consumers. The net effect of the *AbbVie* ruling is that an adjudicated violator is nonetheless free to keep substantial ill-gotten profit based on a legal interpretation of Section 13(b) that no court of appeals held prior to 2019.

<sup>5</sup> Federal Trade Commission Act Amendments of 1994, S. Rep. No. 103-130, at 15-16, as reprinted in 1994 U.S.C.A.N. 1776, 1790-91. As the Senate Report noted, "Section 13 of the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC Act. The FTC can go into court ex parte to obtain an order freezing assets, and is also able to obtain consumer redress.... The FTC has used its section 13(b) injunction authority to counteract consumer fraud, and the Committee believes that the expansion of venue and service of process in the reported bill should assist the FTC in its overall efforts." *Id.*

<sup>6</sup> *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019).

<sup>7</sup> Under Section 13(b), the agency can sue defendants located in Illinois, Indiana, or Wisconsin in any federal district court where they transact business, but such defendants can seek to transfer the case to the Seventh Circuit. If a transfer is successful, *Credit Bureau Center* would be controlling law.

<sup>8</sup> *FTC v. AbbVie, Inc.*, No. 18-2621 slip op. (Sept. 30, 2020).

The Honorable Frank Pallone, Jr.  
The Honorable Greg Walden  
The Honorable Roger Wicker  
The Honorable Maria Cantwell  
Page 4

Now the issue is pending before the Supreme Court, with oral arguments expected in January 2021.<sup>9</sup> Although we hope the high court agrees with us, the recent judicial trends exemplified by *Credit Bureau Center* and *AbbVie* are concerning. If the Supreme Court adopts the Seventh and Third Circuit's interpretation of Section 13(b), it would eliminate the primary tool that the FTC uses to return money to consumer victims.

The uncertainty in the law is already taxing the Commission's law enforcement resources. Defendants now routinely attempt to delay ongoing litigation for as long as possible in the hope that another circuit will reverse its precedent or that the Supreme Court rules against us this coming spring. Defendants are also refusing to engage in settlement discussions unless the Commission agrees to abandon all claims for monetary relief. Some defendants have gone as far as to initiate preemptive litigation in the Seventh Circuit (and now likely will do so in the Third Circuit) to take advantage of the fact that the Commission already is precluded from seeking monetary relief under 13(b) there. These tactics have slowed the resolution of our pending enforcement cases, required the Commission to expend more resources, and prevented staff from taking on new consumer protection work.

Overall, the judicial threats outlined above are grave and, if Congress does not act promptly, the FTC's ability to protect consumers and execute its law enforcement mission will be significantly impaired. Accordingly, we urge Congress to take quick action to amend Section 13(b) to make clear that the Commission can bring actions in federal court under Section 13(b) even if conduct is no longer ongoing or impending when the suit is filed and can obtain monetary relief, including restitution and disgorgement, if successful. Amending Section 13(b) in such a manner will restore Section 13(b) to the way it has operated for four decades.

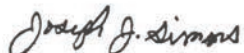
---


<sup>9</sup> *AMG Capital Mgmt. LLC v. FTC*, No. 19-508. *AMG* is an appeal by defendants from a 2019 Ninth Circuit ruling in which the court re-affirmed its prior precedent interpreting Section 13(b) to allow the FTC to obtain monetary relief. The Supreme Court has consolidated *AMG* with the FTC's appeal of the adverse ruling from the Seventh Circuit in *Credit Bureau Center*.

The Honorable Frank Pallone, Jr.  
The Honorable Greg Walden  
The Honorable Roger Wicker  
The Honorable Maria Cantwell  
Page 5

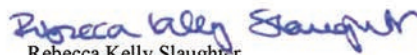
We would be pleased to provide any technical assistance you need to ensure the FTC continues to be able to get meaningful relief for consumers.

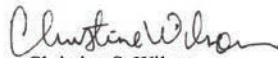
Sincerely,

  
Joseph J. Simons  
Chairman

  
Noah Joshua Phillips  
Commissioner

  
Rohit Chopra  
Commissioner

  
Rebecca Kelly Slaughter  
Commissioner

  
Christine S. Wilson  
Commissioner

cc: Members of the Senate Committee on Commerce, Science, and Transportation  
Members of the House Committee on Energy and Commerce





## Coalition for Online Accountability

February 4, 2021

The Honorable Janice Schakowsky  
Chair  
The Honorable Gus Bilirakis  
Ranking Member  
House Energy & Commerce Subcommittee  
on Consumer Protection & Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20510

Re: WHOIS Data and the Need for Federal Legislation

Dear Chair Schakowsky and Ranking Member Bilirakis:

We at the Coalition for Online Accountability ("COA")<sup>1</sup> have been deeply involved with ICANN related matters including those related to domain registrant information—often referred to as WHOIS data—for nearly twenty years. Last year we wrote to you on June 30 expressing our concerns about the need to restore access to WHOIS data and urging Congress to enact legislation to accomplish this goal (copy of June letter attached for your convenience). In light of the National Telecommunications and Information Administration ("NTIA")'s recent letter of December 23, 2020 to Senate Commerce Committee Chairman Roger Wicker (copy attached), we are writing to renew our request.

We very much agree with NTIA that "the importance of this [WHOIS] data cannot be overstated." Furthermore, we support NTIA's conclusion that the policy, which has been under development by ICANN's multi-stakeholder process for over two years, falls drastically and unacceptably short of meeting the public interest, particularly in the areas of safety, security, consumer welfare and protection of intellectual property. I serve as Vice President of the Intellectual Property Constituency ("IPC") at ICANN. The IPC filed a strong Minority Statement about the August 2020 ICANN policy recommendations as did the Governmental Advisory Committee. Nevertheless, the policy recommendations have been approved by the ICANN Council governing policy development.

Our prior letter to the full Committee (copy attached) described in detail how the ongoing lack of access to WHOIS data obstructs law enforcement investigations and those of organizations devoted to protecting consumer safety, child safety

<sup>1</sup> COA consists of seven leading copyright industry companies, trade associations and member organizations of copyright owners, all of them deeply engaged in the use of the internet to disseminate creative works. The COA members are Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association (MPA); the Recording Industry Association of America (RIAA); NBCUniversal; The Walt Disney Company; and WarnerMedia. COA's main goal since its founding nearly two decades ago (as the Copyright Coalition on Domain Names) has been to preserve and enhance online transparency and accountability.

and intellectual property. The resulting dramatic increase in online abuse of all kinds, from child sexual abuse, to cybersecurity attacks, to COVID-19 related fraud, has been well documented. The Committee's hearing on "Safeguarding American Consumers: Fighting Scams and Fraud During the Pandemic" serves to underscore the need for Congressional action. During a time of enormous stress on the American public due to the COVID-19 pandemic, online criminals have caused Americans to lose hundreds of millions of dollars to pandemic related scams and frauds, as has been reported by the Federal Trade Commission (see, e.g., <https://www.ftc.gov/news-events/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners>) and many news outlets.

All of the operators of these online illegal activities rely on internet platform and service providers. These entities must step up to take on greater responsibility to protect public welfare and safety. In an era of increasing online illegal activity of all kinds, the domain name system is becoming less accountable and responsible because of: (i) the removal of access to WHOIS information to support investigations of illegal online activity, and (ii) major U.S. registrars' and registries' refusal to suspend the domain names of websites engaged in fraudulent or illegal activity absent a court order to do so.

Thus, we encourage the Committee to take up the guidance offered by NTIA and "explore alternative approaches to providing federal and local law enforcement, cybersecurity industries, the business and IP communities—as well as small businesses and the public—prompt and effective access to information [WHOIS data] they need to build a safe, secure, and trustworthy internet." Federal legislation is required to accomplish the guidance set forth by NTIA.

We would like to draw the Committee's attention to the recent proposed Directive on measures for a high common level of cybersecurity issued by the European Commission on December 16, 2020 ("Proposed Directive").<sup>2</sup> The Proposed Directive contains detailed provisions requiring that domain name registries "ensure the availability of accurate and complete domain name registration data."<sup>3</sup> In proposing specific obligations on domain name registries concerning the accuracy of WHOIS data and how it must be made accessible for legitimate interests, the European Commission has clearly demonstrated that it does not find ICANN's policies either adequate or fit for purpose. We agree with this assessment and from its letter of December 23 NTIA appears to as well. Given that the domain name registries that account for the majority of the generic top level domain names (e.g., .com, .net, .org) are United States entities, the U.S. government should enact legislation to require that domain name registries collect and verify WHOIS data and make it accessible to further the goal of a safer and more secure internet.

COA would welcome the opportunity to assist the Committee in any way that the Committee might find helpful to further the goal of enacting legislation to address these critical issues and help further a safer and more trustworthy internet for all Americans.

Thank you for your consideration.

Sincerely,



Dean S. Marks

Executive Director and Legal Counsel  
Coalition for Online Accountability ("COA")  
E-mail: [ed4coa@gmail.com](mailto:ed4coa@gmail.com)

<sup>2</sup> See: <https://ec.europa.eu/digital-single-market/en/news/proposal-directive-measures-high-common-level-cybersecurity-across-union> for a description of the Proposed Directive, also called the NIS 2.0 Proposal. The full text of the Proposed Directive is available for download that this link as well.

<sup>3</sup> See Recital 61 of Proposed Directive.



## Coalition for Online Accountability

[www.onlineaccountability.net](http://www.onlineaccountability.net)

June 30, 2020

The Honorable Frank Pallone  
Chairman  
The Honorable Greg Walden  
Ranking Member  
House Committee on Energy & Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Pallone and Ranking Member Walden:

We at the Coalition for Online Accountability ("COA") have been deeply involved with ICANN related matters including those related to domain registrant information—often referred to as WHOIS—for nearly twenty years. We are writing to you regarding some critical issues that fall under the Committee's jurisdiction; these issues are not only important to COA's members but also are vital to the safety and security of the Internet.

Following the close last week of the ICANN68 Virtual Policy Forum, COA has deep concerns with the lack of substantive progress on Phase 2 of the Expedited Policy Development Process ("EPDP") taking place under ICANN's auspices to address disclosure and access to non-public WHOIS data to serve legitimate interests. As former Assistant Secretary for Communications and Information, David J. Redl emphasized in his April 4, 2019 letter to the ICANN Board of Directors, "The WHOIS information is a critical tool that helps keep people accountable for what they do and put online. Law enforcement uses WHOIS to shut down criminal enterprises and malicious websites. Cybersecurity researchers use it to track bad actors. And it is a first line of defense of intellectual property protection."<sup>1</sup>

In that same letter, Secretary Redl set forth the urgent need for Phase 2 of the EPDP to swiftly create a system "that allows for third parties with legitimate interests, like law enforcement, IP rights holders, and cybersecurity researchers to access non-public data critical to fulfilling their missions." He also stated that "NTIA is expecting this second phase of the EPDP discussion . . . to achieve, substantial progress, if not completion, in advance of ICANN's meeting in Montreal in November (2019)."

<sup>1</sup> See: <https://www.icann.org/en/system/files/correspondence/redl-to-chalaby-04apr19-en.pdf>



It is now June 2020, and while the EPDP second phase discussions are nearing completion, the system for access that Secretary Redl outlined is very far from being achieved. Instead of a centralized, uniform access system, the Phase 2 EPDP team appears set to produce merely a centralized system for receiving access requests, whereby the decisions to grant or deny requests would still be left, with very limited exceptions, to the discretion of the relevant domain name registrar. Unfortunately, such a system will not improve the severe challenges that legitimate interest requestors face today in terms of achieving access to non-public WHOIS data. According to a leading report, from January – June 2020, 70% of requests for non-public WHOIS data have either been denied or not even answered.<sup>2</sup>

In its Input to the Initial Phase 2 Report, the Governmental Advisory Committee (“GAC”) to ICANN expressed significant concerns with the access system being developed and noted at least twelve shortcomings.<sup>3</sup> The GAC summarized its concerns by stating “The GAC therefore emphasizes the public safety imperative for delivering an SSAD (Standardized System for Access and Disclosure) that effectively restores access to non-public registration data, while the ‘reasonable access’ requirement of the Interim Policy (per the Temporary Specification) is made more effective and efficient.”

Unfortunately, it is becoming increasingly clear that the EPDP will not achieve results that comply with the GAC’s guidance or come anywhere near to effectively restoring access to non-public registration data for legitimate interests, including those of governments. The recent letter from ICANN to the European Data Protection Board only serves to confirm this situation.<sup>4</sup> It describes how even requests from a European Data Protection Agency to multiple registrars for non-public registrant/WHOIS data were denied. The letter goes on to state accurately that “The uncertainty about how to balance legitimate interests in access to data with the interests of the data subject leaves much to the subjective judgment and discretion of the registrar, as the controller receiving an access request, on whether to grant or refuse access to the non-public gTLD registration data. Due to a lack of legal certainty, registrars, as controllers, are likely to evaluate privacy and data protection in absolute terms, without considering other rights and legitimate interests.” It appears that the completion of Phase 2 of the EPDP will do nothing to resolve that uncertainty nor improve the ongoing lack of access to non-public data to serve both legitimate and public interests. And the consequences of this are serious as described in the recent report of Interisle, which noted that “these problems have real-life implications for security, stability and trust on the Internet. These include how policies and practices in the domain name industry have made it easier to carry out cybercrime during the current COVID-19 pandemic.”<sup>5</sup> We appreciate that House Resolution 875 introduced and sponsored by Representative Latta firmly acknowledges the critical nature of WHOIS data, the strong public interest associated with such data, and the need for such data to be readily accessible.<sup>6</sup>

As a result, we urge that the U.S. government, including the Energy & Commerce Committee and the NTIA, support the undertaking of a legislative approach to resolve these ongoing significant problems and challenges to online safety and security. As Secretary Redl stated in his April 2019 letter, “Without clear and meaningful progress, alternative solutions such as calls for domestic legislation will only

<sup>2</sup> See report by Appdetex at: <https://www.appdetex.com/appdetex-whois-requestor-system-awrs-3/>

<sup>3</sup> In particular, see p. 2 of the Input at: <https://gac.icann.org/file-asset/public/gac-input-epdp-p2-initial-report-24mar20.pdf>

<sup>4</sup> Letter from Goran Marby to Andrea Jelinek dated May 22, 2020: <https://www.icann.org/en/system/files/correspondence/marby-to-jelinek-22may20-en.pdf>

<sup>5</sup> Domain Name Registration Data at the Crossroads: The State of Data Protection, Compliance, and Contactability at ICANN: <http://www.interisle.net/domainregistrationdata.html>

<sup>6</sup> <https://www.congress.gov/bills/116/congress/house-resolution/875?rs=1&r=8>

intensify and be considered.” We believe the time has come for such a legislative solution to be embraced. Without clear legislation that requires accurate WHOIS data to be made available for law enforcement and other legitimate interests, this “go dark” situation will simply continue and thereby provide cover for ever-increasing levels of online illegal activity.

In addition to our concerns with Phase 2 of the EPDP, we also wish to share our perspective on an issue related to the implementation of Phase 1 of the EPDP. Currently, an effort is underway at ICANN to brandish the Phase 1 recommendations as a weapon to overturn and prevent enforcement of the Thick WHOIS Consensus Policy and the Thick WHOIS Transition Policy, which have already been fully adhered to by all gTLD registries, except for one—Verisign. Our understanding is that while Verisign has implemented Thick WHOIS with respect to .jobs, it has not done so with respect to .com and .net. Even though the ICANN Board, when adopting the EPDP Phase 1 Recommendations, specifically stated that they do not “repeal or overturn existing Consensus Policy, in this case, the Thick WHOIS Policy”<sup>7</sup>, an argument is now being pursued that Recommendation 7 from EPDP Phase 1 conflicts with Thick WHOIS Consensus Policy so as to require the GNSO Council to initiate a new policy development process to re-evaluate Thick WHOIS.

Following the ICANN Board’s adoption of the EPDP Phase 1 Recommendations, the ICANN community received specific legal guidance from ICANN’s selected outside counsel to advise on EU General Data Protection Regulation (“GDPR”) related matters—Bird & Bird—about whether a legal basis exists under the GDPR to justify the transfers of personal data required in Thick WHOIS Policy. Bird & Bird, in its Memorandum dated March 8, 2019, concluded that such legal basis does exist and that Thick WHOIS Policy is compatible with and supported by the GDPR.<sup>8</sup> Therefore, when the entire purpose of the EPDP was to bring ICANN’s registrant data policies into compliance with the GDPR, it defies logic and common sense that the EPDP should now be used to delay and re-examine already existing Consensus Policies that have been determined to fully comply with the GDPR. In adopting Thick WHOIS Consensus Policy in the first place, the ICANN multistakeholder community acknowledged the benefits in terms of improving stability, improving response consistency, improving security, and providing a more level playing field among registry providers.<sup>9</sup> All of those benefits and purposes still apply today, perhaps with even greater force and urgency. We therefore suggest that Congress and NTIA examine and question the current effort to delay enforcement of Thick WHOIS policy (if not undermine it altogether).

A further issue we would like to bring to your attention concerns the release of the O.COM single-character domain name. Despite comments submitted by the Intellectual Property Constituency (“IPC”) of ICANN (of which COA is a founding member) recommending that O.COM be subject to the full scope of mandatory Rights Protection Mechanisms<sup>10</sup>, this did not happen. We do not understand why ICANN would permit the release of a new second-level domain name without requiring that it adhere to all the Rights Protection Mechanisms that have been developed and required to be applied with respect to all new gTLDs. It strikes us as an abdication of responsibility and consistency that serves to disadvantage the legitimate interests of intellectual property rightsholders. In addition, it has been brought to our

<sup>7</sup> See: <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.b>

<sup>8</sup> See Memo provided by Bird & Bird 7 ThickWHOIS at the following link:

<https://community.icann.org/pages/viewpage.action?pageId=105386422>

<sup>9</sup> See Thick WHOIS Final Report: [https://gns0.icann.org/sites/default/files/filefield\\_42383/thick-final-21oct13-en.pdf](https://gns0.icann.org/sites/default/files/filefield_42383/thick-final-21oct13-en.pdf)

<sup>10</sup> See: [https://www.ipconstituency.org/assets/ipc-position-papers/2018/2018\\_06June\\_20%20IPC%20Comments%20on%20Request%20to%20Release%20Single%20Character%20Label%20Domain%20O.COM.PDF](https://www.ipconstituency.org/assets/ipc-position-papers/2018/2018_06June_20%20IPC%20Comments%20on%20Request%20to%20Release%20Single%20Character%20Label%20Domain%20O.COM.PDF)



attention by the recent public release of the original Cooperative Agreement and the first nine amendments, that NTIA appears obligated under the Cooperative Agreement to make sure that Verisign does not charge any fee for domain name registration or renewal that is inconsistent with the Cooperative Agreement. Thus, it would seem that there is a requirement that the government approve in writing all changes in pricing, including offering the SCDNs at auction. COA hopes that NTIA will use this opportunity to review and enforce the ongoing commitments of the Cooperative Agreement as well as encourage Verisign to adopt and adhere to all the Rights Protection Mechanisms that have been developed and required to be applied with respect to all new gTLDs so as not to limit the legitimate interests of intellectual property rightsholders.

COA has been a consistent advocate of Trusted Notifier processes as an efficient and reasonable path for helping diminish online illegal activity. We were happy to see the announcement earlier this month of the pilot Trusted Notifier program that NTIA has initiated with Neustar, PIR and Verisign whereby the FDA will serve as a Trusted Notifier with respect to domain names of websites illegally selling opioids. We wish to express our appreciation to NTIA for this significant step. Furthermore, we wish to extend (and emphasize) our willingness to work cooperatively with NTIA and any Congressional Committees on potential future Trusted Notifier efforts, given our past experience having worked cooperatively with registries Donuts and Radix to put such arrangements successfully into place with respect to sites engaged in pervasive copyright piracy.

With the troubling rise in online abuse and illegal activities<sup>11</sup>, we urge Congress: (i) to support legislative efforts to restore access to WHOIS data, (ii) to investigate the efforts underway to undermine Thick WHOIS and avoid the application of Rights Protection Mechanisms, and (iii) to urge NTIA to continue its efforts to coordinate and implement Trusted Notifier programs. Please know that COA would welcome the opportunity to work collaboratively with the Energy & Commerce Committee on any and all of these efforts.

Thank you for your consideration.

Sincerely,



Dean S. Marks

Executive Director and Legal Counsel  
Coalition for Online Accountability ("COA")

E-mail: [ed4coa@gmail.com](mailto:ed4coa@gmail.com)

<sup>11</sup> See, for example, the FBI's regular reports and releases at: <https://www.ic3.gov/media/default.aspx>





Office of the Chairman

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 30, 2020

The Honorable Robert E. Latta  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Latta:

Thank you for your June 24, 2020 letter requesting information about how the Federal Trade Commission ("FTC" or "Commission") uses domain name registration information, also known as WHOIS, to carry out its law enforcement mission, including its efforts to stop frauds related to COVID-19. You also highlighted your concerns that the implementation of the European Union's General Data Protection Regulation ("GDPR") has negatively affected the ability of law enforcement to identify bad actors online. I share your concerns about the impact of COVID-19 related fraud on consumers, as well as the availability of accurate domain name registration information.

Since the beginning of the pandemic, the FTC has been monitoring the marketplace for unsubstantiated health claims, robocalls, privacy and data security concerns, sham charities, online shopping fraud, phishing scams, work at home scams, credit scams, and fake mortgage and student loan relief schemes, and other deceptions related to the economic fallout from the COVID-19 pandemic.<sup>1</sup> In response, we have taken actions, including filing four cases in federal courts and sending hundreds of warning letters to businesses in the United States and abroad.<sup>2</sup> In addition, we have conducted significant public outreach and education efforts.<sup>3</sup>

Before the GDPR took effect in May 2018, the FTC and other consumer protection and law enforcement agencies routinely relied on the publicly-available registration information about domain names in WHOIS databases to investigate wrongdoing and combat fraud.<sup>4</sup> The FTC uses this information to help identify wrongdoers and their locations, halt their conduct, and preserve money to return to defrauded victims. Our agencies may no longer rely on this information because, in response to the GDPR, ICANN developed new policies that significantly limit the publicly available contact information relating to domain name registrants. For

<sup>1</sup> See generally Prepared Statement by the Federal Trade Commission before the S. Comm. on Commerce, Science, and Transp., Subcommittee on Manufacturing, Trade, and Consumer Protection: Consumer Protection Issues Arising from the Coronavirus Pandemic (July 21, 2020), <https://www.ftc.gov/public-statements/2020/07/prepared-statement-federal-trade-commission-consumer-protection-issues>.

<sup>2</sup> See generally <https://www.ftc.gov/coronavirus>. This page is updated regularly.

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Comment of the Staff of the FTC Bureau of Consumer Protection before the ICANN Public Comment Forum, In the Matter of Tentative Agreements among ICANN, U.S. Dep't of Commerce, and Network Solutions, Inc. (Oct. 29, 1999), <https://www.ftc.gov/policy/policy-actions/advocacy-filings/1999/10/ftc-staff-comment-internet-corporation-assigned-names>; Prepared Statement of the Federal Trade Commission, Hearing on Internet Governance: The Future of ICANN, Before the Subcommittee on Trade, Tourism, and Econ. Dev. of the S. Committee on Commerce, Science, and Transp., 109th Cong. (Sept 20, 2006), <http://www.ftc.gov/os/testimony/P035302igovernancefutureicanncommissiontestsenate09202006.pdf>.

The Honorable Robert E. Latta – Page 2

example, before the GDPR went into effect, the FTC could quickly and easily obtain detailed information about the name, address, telephone number and email of the domain name registrant by typing a simple query. Since May 2018, however, we generally must request this information directly from the particular registrar involved. This can be a time-consuming and cumbersome process.<sup>5</sup>

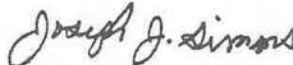
This lack of access also limits consumers' ability to identify bad actors using WHOIS information. Prior to the GDPR, thousands of the complaints filed in our Consumer Sentinel complaint database referred to the filer's use of WHOIS data to identify businesses involved in spyware, malware, imposter scams, tech support scams, counterfeit checks, and other malicious conduct.<sup>6</sup>

The FTC would benefit from greater and swifter access to domain name registration data. Achieving this goal is difficult, however, given the complexity of the GDPR's effect, the required international coordination, and the many stakeholders involved. We have been working with other U.S. agencies to develop solutions through our interaction with ICANN and our international law enforcement colleagues.

One approach that could help overcome the current obstacles would be to mandate disclosure of domain name registration data associated with legal entities, as opposed to natural persons. Legal entities register a significant percentage of domain names, and the GDPR protects the information of natural persons but does not apply to information related to legal entities. ICANN's current mechanisms result in over-application of the GDPR by permitting registrars to choose whether to make the registration data of legal entities public or not. We have raised this issue within ICANN's policy development process.

I appreciate your interest in these issues. If you or your staff has additional questions or comments, please contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Joseph J. Simons  
Chairman

<sup>5</sup> There are more than 2,500 ICANN accredited registrars, many located outside the U.S., with different procedures to obtain registrant data. It can be challenging to determine where to direct a request and what to include in such request for access to this now non-public information as many registrars fail to place such guidance in a location that is easy to find on their websites. After submitting a request, the FTC must wait for the registrar to approve or reject our requests. Moreover, when data is located in a foreign jurisdiction, the process may be more time consuming and require cooperation from our law enforcement partners.

<sup>6</sup> In 2017, we identified over 4,000 complaints filed over a five-year-period.

**Subcommittee on Consumer Protection and Commerce**  
**Hearing on**  
**“Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic”**  
**February 4, 2021**

Bonnie Patten, Esq., Executive Director, Truth in Advertising

**The Honorable Jan Schakowsky (D-IL)**

1. What can the FTC do to make it easier for consumers to confirm the authenticity of PPE online, especially claims of CDC or FDA “certification”?

**Answer:** While PPE covers a broad range of protective equipment,<sup>1</sup> this answer focuses on facemasks, which, when universally worn, slow the spread of COVID-19 according to the CDC.<sup>2</sup> There is no doubt that U.S. consumers are struggling to purchase authentic facemasks online.<sup>3</sup> In order to ensure that consumers are not being exploited by fraudulent PPE sellers, the FTC should take a two-pronged approach. First, the FTC should amplify the messaging of the FDA<sup>4</sup> and the CDC<sup>5</sup> that these agencies do not “certify” facemasks and that claims of certification or approval are false.<sup>6</sup> Consumers should focus on fit, filtration and number of layers in the mask as opposed to alleged CDC or FDA “certifications” and the like when making purchasing decisions.<sup>7</sup> Second, the Commission should make use of the recently enacted COVID-19 Consumer Protection Act, which, among other things, provides for civil penalties up

<sup>1</sup> According to the FDA, “Personal protective equipment (PPE) refers to protective clothing, helmets, gloves, face shields, goggles, facemasks and/or respirators or other equipment designed to protect the wearer from injury or the spread of infection or illness.” Personal Protective Equipment for Infection Control, <https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/personal-protective-equipment-infection-control> (last visited March 8, 2021).

<sup>2</sup> Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2, <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov-2.html> (last visited March 8, 2021).

<sup>3</sup> According to the CDC, “many counterfeit (fake) KN95 masks are commercially available, and sometimes it is hard to tell if they meet the right requirements just by looking at them. At least 60% of the KN95 masks evaluated by NIOSH did not meet the requirements that they claim to meet.” Improve the Fit and Filtration of Your Mask to Reduce the Spread of COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/mask-fit-and-filtration.html> (last visited March 8, 2021). See also, Colleen Long, *U.S. Seizes Over 10 Million Phony N95 Masks in COVID-19 Probe*, Los Angeles Times, Feb. 17, 2021, <https://www.latimes.com/world-nation/story/2021-02-17/us-govt-seizes-over-10m-phony-n95-masks-in-covid-19-probe>; A.C. Shilton, *How to Be Sure Your Face Mask Isn't a Counterfeit*, Popular Mechanics, March 3, 2021, <https://www.popularmechanics.com/technology/a35716090/avoid-counterfeit-masks-kt94-n95-kt95/>; and Kate Cox, *Why N95 Masks Are Still Hard To Get, Even Though Production Is Up*, ARS Technica, March 1, 2021, <https://arstechnica.com/tech-policy/2021/03/why-n95-masks-are-still-hard-to-get-even-though-production-is-up/>.

<sup>4</sup> Face Masks, Including Surgical Masks, and Respirators for COVID-19, <https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/face-masks-including-surgical-masks-and-respirators-covid-19> (last visited March 8, 2021).

<sup>5</sup> Improve the Fit and Filtration of Your Mask to Reduce the Spread of COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/mask-fit-and-filtration.html> (last visited March 8, 2021).

<sup>6</sup> Are there “FDA Registered” or “FDA Certified” Medical Devices? How Do I Know What Is FDA Approved?, [https://www.fda.gov/medical-devices/consumers-medical-devices/are-there-fda-registered-or-fda-certified-medical-devices-how-do-i-know-what-fda-approved?utm\\_medium=email&utm\\_source=govdelivery](https://www.fda.gov/medical-devices/consumers-medical-devices/are-there-fda-registered-or-fda-certified-medical-devices-how-do-i-know-what-fda-approved?utm_medium=email&utm_source=govdelivery) (last visited March 8, 2021).

<sup>7</sup> Ideally, the FTC (or other appropriate agency(s)) could also extract from the FDA and CDC websites, information on authentic facemasks and provide links to websites where consumers could purchase those masks that meet their marketed specifications. See, e.g., Top 10 Ways to Protect Yourself From Counterfeiting and Piracy, <https://www.stopfakes.gov/article?id=Top-10-Ways-to-Protect-Yourself> (last visited March 8, 2021).



to almost \$44,000 for deceptive practices associated with the prevention of COVID-19.<sup>8</sup> Using this law to halt those selling fraudulent PPE will not only protect consumers but it may also deter other wrongdoers from exploiting consumers seeking to purchase PPE online during the pandemic. Additionally, Congress should enact the *Integrity, Notification and Fairness in Online Retail Marketplaces for Consumers* (INFORM Consumers) Act to further combat the sale of fake and counterfeit PPE on online retail marketplaces.<sup>9</sup>

2. How can the FTC better inform consumers about how they can verify claims of PPE “certification” by the CDC and FDA?

**Answer:** It is important to note that neither the CDC nor the FDA issues PPE “certifications.”<sup>10</sup> And while both agencies do review certain PPE, navigating the CDC and FDA websites to determine which specific batches of serial numbered PPE from various companies have obtained and currently possess positive assessment results and/or emergency use authorization is incredibly difficult for even the most sophisticated of consumers. Ideally, the CDC, FDA and/or the FTC would publish a single, easily accessible webpage that would inform consumers how to purchase authentic PPE online and could provide links to legitimate sellers of such PPE thereby eliminating the ability of fraudsters to take advantage of U.S. consumers.

3. How can the FTC work more closely with the CDC and FDA to prevent fraudulent PPE sales online?

**Answer:** The CDC and FDA both test PPE to varying degrees and have identified numerous items of alleged protective equipment that are fake or fail to perform as advertised.<sup>11</sup> These agencies could provide the underlying evidence of deceptive acts and practices to the FTC (to the extent they are not already doing so) for further investigation. The hope would be that the FTC could utilize the information supplied by the FDA and CDC to shut down online vendors of fraudulent PPE.

4. What, if any, additional resources and authorities does the FTC need in order to prevent and take enforcement actions against website domains that are clearly fraudulent (for example, coronavaccinefree[dot]com)?

**Answer:** In order to effectively police wrongdoers and protect consumers against fraudulent website domains, legislative action must be taken to give the FTC the authority it needs to better deter wrongdoers. Congress should enact an imposter law that would provide the FTC with penalty authority to fine the creators of websites that deceptively mimic government entities and/or promote deceptive web addresses. Equipping the FTC with the ability to issue civil

<sup>8</sup> COVID-19 Consumer Protection Act of the 2021 Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, Division FF, Title XIV, § 1401, 2094-2095 (2020).

<sup>9</sup> See *Integrity, Notification and Fairness in Online Retail Marketplaces for Consumers* (INFORM Consumers) Act, <https://www.congress.gov/bills/116/congress/house-bill/7756/text?r=1&s=1> (last visited March 8, 2021). See also, Schakowsky Introduces Legislation to Protect Consumers Online, <https://schakowsky.house.gov/media/press-releases/schakowsky-introduces-legislation-protect-consumers-online> (last visited March 8, 2021).

<sup>10</sup> Are There “FDA Registered” or “FDA Certified” Medical Devices? How Do I Know What Is FDA Approved?, [https://www.fda.gov/medical-devices/consumers-medical-devices/are-there-fda-registered-or-fda-certified-medical-devices-how-do-i-know-what-fda-approved?utm\\_medium=email&utm\\_source=govdelivery](https://www.fda.gov/medical-devices/consumers-medical-devices/are-there-fda-registered-or-fda-certified-medical-devices-how-do-i-know-what-fda-approved?utm_medium=email&utm_source=govdelivery) (last visited March 8, 2021).

<sup>11</sup> See, e.g., Personal Protective Equipment EUAs, <https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/personal-protective-equipment-euas> (last visited March 8, 2021) and NPPTL Respirator Assessments to Support the COVID-19 Response, <https://www.cdc.gov/niosh/nppt/respirators/testing/NonNIOSHresults.html> (last visited March 8, 2021).

penalties against the operators of such fraudulent website addresses would serve as a valuable deterrent against deliberate, egregious violators that are using this pandemic to take advantage of vulnerable consumers.

However, even the most rigorous of laws are of little value if the agency responsible for enforcing them does not have the means or resources to properly police the marketplace. Given the FTC's limited resources, its current ability to oversee a multitrillion-dollar marketplace and protect more than 320 million consumers is clearly hampered. Unless more funding is allocated to this agency, it is impractical to think that the FTC can do more.

5. How can the FTC partner with ICANN, the domain name industry, and other stakeholders to prevent fraudulent pandemic-related websites?

**Answer:** While ICANN and the domain name industry are primarily responsible for internet infrastructure services (and not content regulation), ICANN does provide a procedure to address domain abuse and illegal content in its contracts with accredited registrars, which the FTC should take full advantage of.<sup>12</sup> Specifically, pursuant to section 3.18.2 of the 2013 Registrar Accreditation Agreement,<sup>13</sup> government agencies such as the FTC can alert accredited registrars to "Illegal Activity," which then requires a "review[]" within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report." By way of example, the FDA has effectively used this procedure to shut down two fraudulent COVID-related websites, corona-cure.com and covid19treatment.info.<sup>14</sup>

<sup>12</sup> As of June 2017, there were 2,894 ICANN accredited registrars managing 194,625,933 domain names or 99.5 percent of the market. Brenden Kuerbis et al, *In Search of Amoral Registrars: Content Regulation and Domain Name Policy*, Georgia Tech Internet Governance Project, available at <https://www.internetgovernance.org/wp-content/uploads/AmoralReg-PAPER-final.pdf>

<sup>13</sup> See 2013 Registrar Accreditation Agreement, <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en> (last visited March 8, 2021). ("3.18.2 Registrar shall establish and maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of Illegal Activity by law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report. In responding to any such reports, Registrar will not be required to take any action in contravention of applicable law.")

<sup>14</sup> See FDA's Registrar and Registry Abuse Complaints, <https://www.fda.gov/consumers/health-fraud-scams/registrar-and-registry-abuse-complaints> (last visited March 8, 2021).

FRANK PALLONE, JR., NEW JERSEY  
CHAIRMAN

CATHY McMORRIS RODGERS, WASHINGTON  
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

February 22, 2021

Mr. William E. Kovacic  
Professor  
George Washington University Law School  
7575 Dunquin Court  
Clifton, VA 20124

Dear Professor Kovacic:

Thank you for appearing before the Subcommittee on Consumer Protection and Commerce on Thursday, February 4, 2021, at the hearing entitled "Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic." I appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from a member of the Committee. In preparing your answers to these questions, please address your response to the member who has submitted the questions in the space provided.


To facilitate the printing of the hearing record, please submit your responses to these questions no later than the close of business on Monday, March 8, 2021. As previously noted, this transmittal letter and your responses, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided to Ed Kaczmariski, Policy Analyst, at [ed.kaczmariski@mail.house.gov](mailto:ed.kaczmariski@mail.house.gov). To help in maintaining the proper format for hearing records, please use the document provided to complete your responses.



Mr. William E. Kovacic  
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ed Kaczmariski with the Committee staff at (202) 225-2927.

Sincerely,

  
Frank Pallone, Jr.  
Chairman

Attachment

cc: The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce

The Honorable Jan Schakowsky  
Chair  
Subcommittee on Consumer Protection and Commerce

The Honorable Gus Bilirakis  
Ranking Member  
Subcommittee on Consumer Protection and Commerce

[Mr. Kovacic did not answer submitted questions for the record by the time of printing.]

Mr. William E. Kovacic  
Page 3

**Attachment—Additional Questions for the Record**

**Subcommittee on Consumer Protection and Commerce  
Hearing on  
“Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic”  
February 4, 2021**

Mr. William E. Kovacic, Professor, George Washington University Law School

**The Honorable Jan Schakowsky (D-IL)**

1. What can the FTC do to make it easier for consumers to confirm the authenticity of PPE online, especially claims of CDC or FDA “certification”?
2. How can the FTC better inform consumers about how they can verify claims of PPE “certification” by the CDC and FDA?
3. How can the FTC work more closely with the CDC and FDA to prevent fraudulent PPE sales online?
4. What, if any, additional resources and authorities does the FTC need in order to prevent and take enforcement actions against website domains that are clearly fraudulent (for example, coronavaccinefree[dot]com)?
5. How can the FTC partner with ICANN, the domain name industry, and other stakeholders to prevent fraudulent pandemic-related websites?

## Additional Questions for the Record

## Subcommittee on Consumer Protection and Commerce

## Hearing on

## “Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic”

February 4, 2021

Responses from Jessica L. Rich, Distinguished Fellow, Institute of Technology Law and Policy,  
Georgetown Law

The Honorable Jan Schakowsky (D-IL)

Question 1. What can the FTC do to make it easier for consumers to confirm the authenticity of PPE online, especially claims of CDC or FDA “certification”?

Question 2. How can the FTC better inform consumers about how they can verify claims of PPE “certification” by the CDC and FDA?

Question 3. How can the FTC work more closely with the CDC and FDA to prevent fraudulent PPE sales online?

- Answer to Questions 1, 2, and 3:

As the FTC has [testified](#) before Congress and described on its [website](#), the agency has worked hard since the beginning of the pandemic to educate consumers and businesses about COVID-related scams, and to send warning letters and bring lawsuits against the scams’ perpetrators. The COVID Consumer Protection Act, passed with your leadership and support last year, has significantly strengthened FTC’s ability to deter and take action against these scams.

Some of the FTC’s actions have involved fraud and deception related to the sales of PPE. For example, the FTC has provided [tips to consumers](#) about checking the credentials of PPE merchants and disputing fraudulent sales, and has disseminated these tips through numerous partners nationwide. It also has brought lawsuits against [companies](#) that [falsely promised rapid shipping](#) of facemasks and other PPE. Importantly, however, the FTC does not have the expertise to evaluate the *quality* of PPE or the accuracy of certifications regarding quality. Such evaluations need to be performed by the CDC, FDA, or other agency with medical or public health expertise.

Based on conclusions drawn by the CDC and/or FDA about PPE quality or certifications, the FTC can work with these agencies to develop and disseminate clear and accurate messages for consumers about what PPE to buy and what PPE to avoid. In addition, if the CDC and/or FDA determine that particular sellers are making false claims about PPE quality or certifications, the FTC can challenge these claims as deceptive under the FTC Act.

The FTC is currently stretched for resources, so I am sure it could use additional staff to perform this important work.

Question 4. What, if any, additional resources and authorities does the FTC need in order to prevent and take enforcement actions against website domains that are clearly fraudulent (for example, [coronavaccinefree\[dot\]com](https://coronavaccinefree[dot]com))?

- Answer:

If the FTC determines that a website domain is communicating a deceptive and fraudulent message to consumers, the FTC can challenge that domain name just as it challenges other deceptive and fraudulent claims. For example, last fall, the agency took action against a [PPP loan scam](#) that claimed to be affiliated with the Small Business Administration and used the domain name SBALoanProgram.com.

To date, the FTC has been able to take action against such frauds under Section 13(b) of the FTC Act, which has allowed the FTC to obtain both injunctive relief shutting such frauds down, and the return of money to the frauds' victims. As discussed at the February 4 hearing, however, the FTC's ability under Section 13(b) to return victims' money is under threat, and may well be eliminated by a [pending proceeding](#) at the Supreme Court. Therefore, to enable the FTC to fully address COVID-related frauds, it would be critical for Congress to restore this authority to the agency. In addition, Congress should consider granting the FTC broader civil penalty authority, and then creating a civil penalty fund from which consumer refunds could be paid.<sup>1</sup> Finally, as discussed above, the FTC needs more resources to support this and other important work.

---

<sup>1</sup> Thanks to the COVID Consumer Protection Act, the FTC now has civil penalty authority for these types of frauds. However, returning money to injured consumers, rather than sending it to the U.S. Treasury, is always the best option if feasible. Further, this civil penalty authority lasts only for the duration of the pandemic and will not apply to future frauds.

Question 5. How can the FTC partner with ICANN, the domain name industry, and other stakeholders to prevent fraudulent pandemic-related websites?

- Answer:

Because I am no longer working at the FTC, I do not know how the agency currently works with ICANN and other members of the domain name industry. However, during my tenure at the FTC, the agency routinely reached out to ICANN and other registries to alert them about fraudulent companies using their registries, so that the registries could exercise oversight over such companies and possibly terminate services to them. Such communications were informal; ICANN was not required to follow the advice of the FTC or grant its requests. If Congress wants the FTC to play a more formal role with respect to the registries, it will need to establish such a role through legislation.

Of course, if a registry persists in enabling fraud by companies using its services, the FTC might be able to take legal action against the registry for “assisting and facilitating” fraud. Currently, such cases are difficult to prove, since the FTC has limited authority to pursue “assisters and facilitators” and generally must prove such claims under its “unfairness” authority. If Congress wants the FTC to play a stronger enforcement role here, it should consider providing the FTC with stronger authority to challenge entities “assisting and facilitating” fraud.

